UNITED NATIONS

EIGHTH
UNITED NATIONS CONGRESS
ON THE PREVENTION OF CRIME
AND THE TREATMENT OF OFFENDERS
Havana, Cuba, 27 August to 7 September 1990

Distr.
GENERAL

A/CONF.144/12
28 May 1990

ORIGINAL: ENGLISH

Item 4 of the provisional agenda*

CRIMINAL JUSTICE POLICIES IN RELATION TO PROBLEMS OF IMPRISONMENT, OTHER PENAL SANCTIONS AND ALTERNATIVE MEASURES

Alternatives to imprisonment and the reduction of the prison population

Report of the Secretary-General

Summary

This report has been prepared in pursuance of Economic and Social Council resolution 1986/10, section XI. The replies of various Member States to a survey on efforts to reduce the negative effects of imprisonment and to develop further the application of non-custodial measures are summarized and analysed. Information received from the United Nations institutes on crime prevention and criminal justice as well as from interested intergovernmental and non-governmental organizations in consultative status with the Economic and Social Council is also included. Special attention is paid to the development of new measures and their application at various stages of criminal proceedings and their effectiveness in providing alternatives to imprisonment. Their role in reducing the prison population is discussed. It is recommended that more attention be paid to the application of alternatives at the pre-trial stage, that the range of available alternatives at the trial stage be expanded and that the use of alternatives after conviction be further increased. The widespread application of conditional release (parole) is also noted.

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*A/CONF.144/1.

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INTRODUCTION

1. The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 16 on the reduction of the prison population, alternatives to imprisonment, and social integration of offenders, 1/ recommended, *inter alia*, that Member States should further increase their efforts to reduce the negative effects of imprisonment and intensify the search for non-custodial sanctions, which would help to reduce the prison population. The Congress also invited Governments to continue reporting to the Secretary-General every five years on developments in those areas.

2. Subsequently, the Economic and Social Council, in its resolution 1986/10, section XI, requested the Secretary-General to prepare a report on alternatives to imprisonment for the Eighth Congress.

3. For the present report, the Secretary-General, by his note verbale of 16 December 1987, invited Governments and other parties concerned to provide up-dated information on alternatives to imprisonment and measures for the social resettlement of prisoners.

4. As of 30 April 1990, 70 Governments had replied to the note verbale of the Secretary-General: Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belgium, Bolivia, Burundi, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Chile, Chad, China, Colombia, Cuba, Cyprus, Czech and Slovak Federal Republic, Denmark, Dominican Republic, Ecuador, Egypt, Finland, France, Gabon, German Democratic Republic, Germany, Federal Republic of, Greece, Holy See, Indonesia, Iraq, Israel, Japan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Luxembourg, Mali, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Uruguay, Yemen, Yugoslavia and Zimbabwe.

5. Replies were also received from other sources, including the Alliance of NGOs on Crime Prevention and Criminal Justice (New York and Vienna), the Howard League for Penal Reform, and the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations.*

6. In view of the need for continuity and easier reference, a structure similar to the report prepared for the Seventh Congress (A/CONF.121/13) has been retained. Information contained in that report, if still relevant, has been included and used in the analysis of current trends and developments. The report summarizes the replies on alternatives and substitutes to the

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*In the reply from the Helsinki Institute, reference was made to Peter J. P. Tak, *The Legal Scope of Non-Prosecution in Europe*, HEUNI Publications Series No. 8 (Helsinki, 1986), and Norman Bishop, *Non-Custodial Alternatives in Europe*, HEUNI Publications Series No. 14 (Helsinki, 1988). See also Anton M. van Kalmthout and Peter J. P. Tak, *Sanctions-Systems in the Member-States of the Council of Europe*, part I (Deventer Kluwer Law and Taxation Publishers, 1988) and part II (Deventer, Kluwer Law and Taxation Publishers, 1990).

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deprivation of liberty at the pre-trial, trial and post-conviction stages and on measures to alleviate or restrict the length of prison sentences. Information provided by States to bring up to date section II of the previous report on treatment of offenders, focusing on measures aimed at the social resettlement of prisoners and on staff training, has been incorporated in the report of the Secretary-General on the implementation of the Standard Minimum Rules for the Treatment of Prisoners (A/CONF.144/11). Additional and more detailed information, in particular on training and on efforts by States to include the above-mentioned United Nations instruments in the training programmes of law-enforcement officials, is contained in the reports of the Secretary-General on the implementation of the Standard Minimum Rules for the Treatment of Prisoners (ibid.), of the Code of Conduct for Law Enforcement Officials (E/AC.57/1988 and Add.1/Rev.1 and Add.2) and the report prepared by the Secretariat on the implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (A/CONF.144/4), which are before the Eighth Congress. The present report should also be read in conjunction with the report of the Secretary-General on research on alternatives to imprisonment (A/CONF.144/13), prepared for the Research Workshop of the Eighth Congress on this topic.

7. The expression "alternatives to imprisonment" covers a wide range of measures. The term is used here to refer to pre-trial measures intended to avoid formal court proceedings, to non-custodial measures imposed by the court in the trial phase and to sanctions taken at the post-conviction stage, during the enforcement of a prison sentence, in order to alleviate the negative effects of imprisonment.

8. Many countries reported that new penal codes or new criminal legislation had come into force since the 1985 report. In some, such as Austria, Chile, the Czech and Slovak Federal Republic, Luxembourg, the Netherlands, New Zealand, Turkey and the USSR, the provisions on sanctions had been amended in order to restrict the actual term of imprisonment or to facilitate the use of alternatives to imprisonment. In other countries, such as Cuba, a new penal code had come into force with a completely new system of sanctions, also based on recent United Nations standards and norms.

9. Draft bills and proposals for reforming the provisions on pre-trial detention and the system of sanctions had been drawn up in a great number of countries in order to restrict the use of deprivation of liberty. In Argentina, Barbados, Colombia, Cyprus, Egypt, Finland, Greece, Iraq and Switzerland, far-reaching proposals for reform were being discussed. A number of countries, such as Uruguay, reported on model experimental institutions intended to provide information for a general reform of the national criminal justice system.

10. Many countries reported that humanitarian considerations had led to the development of alternatives to imprisonment, but that pragmatic considerations were also a driving force. Almost all the replies revealed that limited prison capacity was a major problem. The development of alternatives to imprisonment is one way to alleviate the situation. The use of alternatives could also be cost-effective; many countries reported that the alternatives were considerably less expensive than institutional treatment.

I. PRE-TRIAL STAGE

11. Since, by law, suspects are to be presumed innocent until proved guilty,* they should not be subject to any restrictions unless these are indispensable. Consequently, pre-trial detention should be used only when absolutely necessary and when no other appropriate alternative is available. Pre-trial detention should not last longer than strictly necessary. In the replies, there was broad agreement that detention served during the pre-trial stage should be deducted in full from the sentence eventually imposed. Thus, in the legislation of Burundi, Luxembourg, Qatar and many other countries, such a deduction was obligatory.

A. Detention

12. The main justification for pre-trial detention, also referred to as detention on remand, is the danger that the suspect might otherwise abscond, commit or repeat an offence, interfere with witnesses or otherwise pervert the course of justice. The imposition of pre-trial detention depends mainly on the seriousness of the offence, on the personal circumstances of the suspect and on the degree of danger to which society is exposed.

13. The replies showed that most countries were making efforts to restrict the application of pre-trial detention by reducing or more strictly formulating the grounds for pre-trial detention, by applying it only for a restricted number of offences according to their degree of punishability and by using alternatives. Measures to reduce the length of detention were also being taken. Antigua and Barbuda reported that the introduction of a "no pre-trial custody rule", which could be waived only under very restrictive conditions, had led to a reduction in the prison population.

14. Various alternatives to pre-trial detention were described. Some of them, such as provisional probation in Austria, and home arrest in Indonesia, were recent additions to the legislature. Some other measures had long been recognizedas alternatives to pre-trial detention. Examples included recognizance and bail, as in Australia, Chad, Luxembourg, Mexico and Nigeria, judicial pre-trial supervision, as in France, and commitment to the custody of the social services, or guarantees provided by individuals or by community-based organizations. Several countries had reduced the use of pre-trial custody for juvenile suspects by using substitute measures, such as the handing over of juveniles to their actual guardians or to third persons. One of the newest alternatives, electronic monitoring, was being considered by expert committees in a number of jurisdictions, such as the Netherlands, Switzerland and the United Kingdom, following small-scale experiments with their use in Canada and the United States of America.

15. The length of pre-trial detention was determined primarily by the progress of the investigation and the trial. Data provided by many countries, such as Australia, Denmark, Japan and the United Kingdom, indicated a continuing increase in the number of remand prisoners. Some countries, however, such as the Federal Republic of Germany, reported a downward trend both in the absolute number and the percentage of pre-trial detentions. A number of countries with large numbers of persons in pre-trial detention and long pre-trial detention periods reported of efforts to speed up investigation and trial. In Argentina, where a high proportion of convicted persons had already served between 50 and

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*See, for example, article 14, paragraph 2, of the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex).

90 per cent of their prison sentence in remand centres, a Code of Criminal Procedure had been designed to reduce the length of the proceedings substantially. In the Dominican Republic and the Philippines, universities and lawyers had been asked to provide pre-trial detainees with legal aid in order to speed up the proceedings. Some countries had an absolute statutory maximum term of pre-trial detention laid down in their codes of criminal procedure, which acted as an incentive to speedy investigation, since the detainee had to be released once the term had expired. Other legislation provided for relative limits, which, under certain conditions, could be extended by decision of a judicial authority. The legislation of Finland, the Federal Republic of Germany, the Netherlands, Niger, Nigeria and the United Kingdom, for example, provided for statutory limits on the amount of time spent in custody awaiting trial.

B. Discontinuance of criminal proceedings

16. A considerable amount of legislation provided for measures aimed at the discontinuance of criminal proceedings. When the offence was not serious and public trial and formal conviction were not, therefore, required on grounds of special or general prevention, the disposition could be made either by the court or by the prosecution. While the latter were mainly responsible for taking the decision not to prosecute, the adoption of measures reducing the personal liberty of the suspect was mostly a matter for the courts to decide, through directives and instructions.

17. In a number of countries, for example Burundi, Denmark, France, Japan, Niger, and the United Kingdom, discretionary power to waive a prosecution for reasons of public interest and expediency was vested in the prosecution service. Various reasons for non-prosecution on the grounds of expediency were mentioned in the replies, for example the fact that the criminal offence was a minor one or that the suspect was a first offender or a juvenile. In some countries, discretionary power was widely used. Japan, for example reported a non-prosecution rate of 34.8 per cent in cases concerning non-traffic offences. A waiver of prosecution might be conditional, as in the Federal Republic of Germany, the Netherlands, Norway and Poland. The conditions are often identical to those applying to suspended sentences: for example, compensation of the victim, performance of non-remunerated work for the benefit of the community, or compliance with probation.

18. Discontinuance includes diversion from the criminal justice process, which is dealt with in the present report only in so far as further action by judicial authorities is required. Thus, the exemption from criminal liability because the offence represented little or no danger to society, as provided, for example, in the legislation of the German Democratic Republic, the USSR and Yugoslavia, was considered only in cases where judicially supervised conditions were imposed on the suspect. Diversion was generally used to deal with minor offences, for example in order to provide the administration of criminal justice with additional time and means to deal with more serious offences, thus saving human and financial resources. Many countries had introduced diversion on a large scale, including the transfer of proceedings to administrative authorities or to community-based bodies of restricted jurisdiction, such as juvenile affairs committees in the Byelorussian SSR. China used civic educational groups; the Philippines had dispute settlement boards; Norway and Sri Lanka mentioned conciliation boards, consisting of individuals from the local community who summoned both the suspect and the victim to agree between themselves on victim compensation. Similar experiments were in progress in Finland, aiming at a settlement between suspect and victim, with the assistance of mediators.

19. In order to show public disapproval of the act committed, the legislation of some countries provided for an admonition, after which the judicial proceeding was discontinued. In some countries, such as the Philippines and Thailand, that method applied only to juvenile offenders. In others it was less restricted, for example, in the United Kingdom, where a caution - a reprimand by a senior police officer - was used primarily for young or elderly offenders, those who were mentally disturbed or under particular stress, and first offenders.

II. TRIAL STAGE

20. Numerous examples provided by Governments confirmed the continuing trend towards replacement of prison sentences by alternatives, noted in the last report (A/CONF.121/13, sect. I, subsect. B). In 1986, penalties not involving imprisonment were applied in 75 per cent of all criminal cases in Cyprus and in 86 per cent of the convictions in Canada. The effect of the wider use of alternatives to imprisonment was demonstrated in the reply from Cuba, indicating that, within a little more than one year of introducing the fine as the principal alternative to imprisonment in the new penal code of April 1988, the prison population had declined by some 50 per cent. In the Byelorussian SSR, 75 per cent of all persons convicted were sentenced to non-custodial sanctions in 1987. In Yugoslavia, 35 per cent of all convicted offenders were sentenced to conditional sentences in 1986; 40 per cent to fines and 1.5 per cent to reprimand, declaration of guilt and release with educational measures. The wide agreement on the need to minimize the use of imprisonment and to extend the use of alternatives that did not involve deprivation of liberty was generally based on the common belief that imprisonment should be applied only as a last resort.

A. Short-term imprisonment

21. There is no general consensus on what should be understood by the term "short-term imprisonment". Criteria used in national legislation and penal law practice differ. The upper limits of short-term imprisonment reported, however, in general ranged from three to six months; the six-month limit seemed to be the most widely accepted one. The term "short-term imprisonment" was not the same as the term "statutory minimum term of imprisonment". The statutory minimum term of imprisonment varied considerably. In the Netherlands it was one day, in Sweden and Yugoslavia two weeks, and in the Federal Republic of Germany one month. In Poland, the general minimum period depended on the category of the criminal offence, namely three months for a crime and one month for a contravention.

22. There were different attitudes on alternatives to short-term imprisonment. The reports indicated two trends: on the one hand, efforts to reduce the number of short-term prison sentences by restricting the opportunity to pass such sentences, by altering the statutory minimum period of imprisonment and by widening the applicability of suspended sentences and fines; and, on the other hand, efforts to develop new alternatives and substitutes for short-term imprisonment, and to widen their applicability.

23. In a number of countries, legislation restricted the opportunity to order or implement short-term prison sentences. According to section 49 of the Penal Code of the Federal Republic of Germany and section 37 of the Austrian Penal Code, a sentence of short-term imprisonment up to six months could not be ordered unless special circumstances related to the offence or the offender made a prison sentence advisable because of considerations of general or

special deterrence; the priority of fines over short-term imprisonment was emphasized. The Portuguese Penal Code went a step further; all prison sentences of up to six months had to be converted into day-fines unless the implementation of the custodial sentence was necessary to prevent further offences from being committed. In other countries, such as Belgium and Luxembourg, there was a general policy not to enforce short-term sentences of up to four months unless desirable in the interest of public policy or on account of special circumstances. The Ukrainian SSR reported that, according to the Code of Criminal Procedure, the court was obliged to justify a prison sentence if the penalties provided for in the criminal law also included non-custodial penalties.

24. A number of countries reported that the penal code stipulated that prison sentences could be replaced by non-custodial sanctions, such as pecuniary sanctions, suspension or deprivation of licences or rights and the commitment to carry out non-remunerated work. In most of those countries the use of substitutes was restricted to prison sentences of up to six months, but in some there were no such restrictions. In Greece, for example, a prison sentence not exceeding 18 months could be commuted to a fine. In France, instead of being sentenced to prison, the defendant could have his or her vehicle immobilized, or his or her driving licence or humting permit withdrawn. In Norway, community service could be substituted for a prison sentence of up to one year.

25. While most new legislation on the system of sanctions responded to the general demand for alternatives to short-term imprisonment, in some countries, such as Finland and the United Kingdom long-term criminal policy was to reduce the length of sentences in general. The statistics from Finland clearly showed the success of that policy. The median length of a prison sentence in Finland for all offences had been 5.9 months in 1960, 5.0 months in 1970 and 3.7 months in 1980. By the mid-1980s it had been reduced to 3.4 months. In the United Kingdom, however, the average length of a prison sentence for men over 21 sentenced in the Crown Courts was increasing: the average was 16.6 months in 1984 and 18.3 months in 1986.

26. An important change in sentencing practices concerning short-term imprisonment was reflected in statistical data received from Cuba, the Federal Republic of Germany, Turkey, the USSR and Yugoslavia, which showed a decrease in either the absolute number or the percentage of short-term sentences and corresponding increase in fines or other substitutes.

27. Where the offence was not serious, or especially where the offender was a juvenile, considerable use was made of admonition, penal warning or other forms of reprimand given during trial. In Europe, public reprimand was mainly used in Eastern European countries, for example the Byelorussian SSR, the German Democratic Republic, the USSR and Yugoslavia. Public reprimand was also an important non-custodial alternative in the Philippines, Thailand, the United Kingdom and Singapore. Public proceedings were, however, discouraged for juveniles, as young persons were particularly susceptible to stigmatization and criminological research showed the detrimental effect of labelling young persons as delinquents or criminals.*

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*See, for example, rule 8 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (General Assembly resolution 40/33, annex).

B. Fines

28. Fines are the most common alternative to short-term imprisonment. They have gained universal importance and are widely used in many countries for a broad range of offences. Several countries, including the Byelorussian SSR, Cuba, Portugal and Turkey, reported that they had recently extended considerably the use of fines instead of short-term imprisonment.

29. Fines have the advantage of being economical in terms of both money and labour, and practical in terms of management and administration. They are also humane, as they inflict a minimum of social harm. They do not lose their intimidating character, and judicial errors can be more easily corrected. There are two major fine systems: the lump-sum fine and the day fine. In the former, the amount of a fine within the statutory upper and lower limits is left to the discretion of the court, which, in turn, considers both the seriousness of the offence and the offender's financial resources. In the latter, these two factors are assessed independently: the court assesses first the seriousness of the offence in terms of the number of day fines to be paid (within the statutory upper and lower limits), and then assesses separately the offender's means in order to determine the amount of each fine to be paid. The amount offenders have to pay is in direct proportion to their net income and property. A number of countries reported having introduced a day-fine system to counteract one of the disadvantages of the lump-sum fine, namely that the system creates inequalities by discriminating against the poor for whom fines are usually converted into imprisonment because of non-payment (fine default). For that reason some countries, such as the Philippines, did not substitute fines for imprisonment.

30. The day-fine system was introduced in Finland as long ago as 1921 and in Sweden in 1931. Since then it has been adopted in Austria, Bolivia, Denmark, the Federal Republic of Germany and some other countries. The replies showed that there was a clear trend towards use of the day fine and the Governments of several countries, including France and Portugal, reported that they had recently introduced the system. It had been proposed in the new draft penal codes for Belgium and Switzerland.

31. A number of countries reported that the probable conversion of a fine into deprivation of liberty because of non-payment was an indispensable threat that made the fine an effective penalty. In most countries, the term of fine-default detention was regulated by law or expressed in the judgement, in general, on the basis of a statutory fixed conversion rate. In countries that made use of day fines, the number of days of fine-default detention generally equalled half the number of day fines imposed. The maximum period of fine-default detention, as laid down in the penal code of a number of countries, varied widely. For example Yugoslavia reported a maximum term of six months, while the maximum term in Poland and Turkey was three years.

32. Some countries allowed conversion only in certain cases; in Sweden, for example, fines could be converted into imprisonment only if the non-payment was due to unwillingness to pay. To restrict conversion of unpaid fines into imprisonment, countries often granted the convicted person a reprieve from payment or the possibility of paying in instalments. To avoid the conversion of unpaid fines into imprisonment, some countries, for example the Ukrainian SSR and the USSR, had already implemented legislative regulations that prohibited such conversion. Instead of fine-default detention in those countries, the unpaid fine could be replaced by corrective labour without deprivation of freedom in case of deliberate non-payment, or public reprimand could be substituted for it. A number of countries reported on other

alternatives to fine-default detention, such as community service or supervised liberty. In Australia, the Federal Republic of Germany, Norway, Portugal and Switzerland, for example, fines that could not be collected could be converted into community service. Australia and the Federal Republic of Germany reported success with that measure.

33. The importance of the fine system was borne out by several reports. In Japan, a fine had been imposed in 96.8 per cent of all convictions in 1986, while in Cuba - since 1988 when the new Penal Code had come into force - a fine had been imposed in more than 84 per cent of the convictions. The Government of the Federal Republic of Germany reported an increase in the proportion of sentences involving fines, from 81.1 per cent in 1980 to 82.4 per cent in 1986. In Yugoslavia the use of fines increased from 34.5 per cent in 1976 to 40.3 per cent in 1986.

34. A further monetary measure that might help avoid imposition of a prison sentence was the use of penalties paid as compensation, in the form either of a restitution order - to return the property to its legitimate owner - or of a compensation or reparation order, related to the provision of monetary or other compensation for loss, damage or injury sustained by the victim. The orders could be used as a principal sentence or in combination with a suspended or conditional sentence. In some countries, such as the Byelorussian SSR, the German Democratic Republic and Israel, orders for victim compensation applied only to juvenile offenders. In other countries, the possibility was also extended to adult offenders. Restitution and compensation orders, as an important independent non-custodial alternative, were reported by Australia, Cyprus, New Zealand and the United Kingdom. Proposals to introduce a compensation order as a principal penalty in the penal code was being discussed in some countries, such as the Netherlands.

C. Suspension of sentence or of enforcement, including probation

35. Suspension of sentence, known by different legal terms, exists in the legislation of, and is applied in, most countries. Usually, it implies conviction and imposition of the sentence, although enforcement of the sentence is suspended. It may also involve conviction and suspension of the imposition of the sentence. In both cases the suspension is subject to compliance by the offender with certain conditions during a probationary period, and to no further offence being committed.

36. A number of countries, such as Chad, China, Japan, Norway and Thailand, reported that a suspended sentence was combined with the obligation to maintain contact with a probation officer or to be under supervision and control by a probation agency; to notify the officer of any change of address, and to provide essential information about such matters as the offender's life-style, job and earnings. It was also common practice to impose other conditions concerning residence, work, education or treatment. Payment of damages was also a condition in a number of countries, for example Oman.

37. In general, the suspended sentence could be enforced if the offender committed another offence. Two different systems were in use: either the suspended part of the sentence was fully or partially enforced, or the suspended sentence was combined with the sentence imposed for the new offence. The first system was in force in Finland, for example, the second in Norway and Sweden. Some legislations provided for other measures to lessen the use of imprisonment, such as a judicial warning, extension of the probation period or alteration of the conditions of probation. The same measures were applicable if the offender did not meet the conditions or failed to comply with the

directives during the probation period. The suspended sentence could be enforced in full or in part. In many countries, provisions facilitating the conditions for revocation of suspended sentences were under discussion.

38. Most legislation provided for limits governing the imposition of suspended sentences. Often the condition involved the length of the term of imprisonment that can be suspended, which varied considerably. According to Swiss legislation, suspension was possible with sentences of imprisonment of up to 18 months, in Austria, the Federal Republic of Germany and Romania of up to two years, in Argentina, the Netherlands, Poland, Portugal and the Ukrainian SSR of up to three years. In several countries, however, the limits were not applied to juvenile offenders. Some countries, such as Gabon, restricted the imposition of suspended sentences to first offenders.

39. The probation periods of those under suspended sentence varied considerably from one country to another, and ranged from one year to five years, the latter in Burundi, for example. Periods of from two to three years were the most common.

40. Developments in different countries showed that suspension of sentence or of its enforcement was a very effective and socially acceptable way of reducing imprisonment. Many countries, such as Austria, the Federal Republic of Germany and the Netherlands, reported that new legislation had recently been introduced to extend the use of suspended sentences. Others, such as Barbados, Cameroon and Nigeria, noted that such legislation was being discussed.

41. Probation, consisting mainly of supervision in the community through case work, was often imposed as a condition for suspended sentence. In many countries, it could also be imposed as a principal sentence in the form of a probation order. Chad, Cyprus, Israel, Pakistan, Sri Lanka, the United Kingdom, for example, incorporated provisions to that effect in their legislation. Probation traditionally combines both care and control: care, in the sense that it gives offenders the opportunity of acquiring insight into, and if possible overcoming, the personal and social problems associated with their criminal behaviour; and control, in so far as a probation officer supervises an offender's social and personal adjustment.

42. Supervision is usually carried out by professional social workers of the probation and after-care service or by government-controlled private organizations. As in the past, a number of States reported that, para-professionals and volunteers were playing an increasingly important role in probation. Many stressed that the volunteers' functions had to be clearly defined. In some instances volunteers were appointed from among residents of the area in which probationers lived, or from among their co-employees, for example, labour unions and the working collective in socialist countries; often local and regional rehabilitation councils were involved. Canada reported that voluntary probation officers played a role, especially in remote areas. The use of volunteers did, however, require some basic training and adequate supervision. In Japan, volunteers' organizations had gained widespread public recognition as they became the leading contributors to supervision and after-care services for ex-offenders.

43. Some replies indicated that the increased involvement of private welfare organizations in the rehabilitation of offenders and, in particular, in the care of probationers, had financial implications for judicial authorities, as they normally supported such community-based bodies. The cost of increased application of community-based alternatives could, however, be offset to some extent by the decrease in the cost of institutional treatment and in the

decrease of the construction or adaptation of prisons. Volunteers further reduced the cost of probation and related measures.

44. Multiform probation services, including professionals, para-professionals, and volunteers, have complex and sometimes inherently contradictory tasks involving both assistance and control. Trusted as they are by the courts, the services should also be trusted by the probationer. Probation officers may be placed in a difficult situation, for example, when they must decide whether or not to report significant cases of misconduct by the probationer to the courts and thus give grounds for a possible revocation of the probation order. Some countries reported that the dilemma of control and assistance was resolved by entrusting the different tasks to separate agencies, for example, to the police, on the one side and probation officers and treatment institutions on the other side.

45. Many countries used other forms of supervision, in addition to, or instead of, the general form of supervision of the probationer through a probation officer. Control was exercised through periodic reporting to the police, by assigning probationers to specific homes or treatment centres, or by restricting liberty, so that offenders were confined to a specific area, which they were not allowed to leave, even for short periods of time, without the approval of the competent authorities. The assignment of probationers to special homes also had a care function, as offenders could be offered educational or vocational training facilities, even though the offer was not necessarily tied to their being accommodated in such homes. Apart from those generally applicable directives, the legislation of several countries provided special regulations for specific groups of offenders, for example, drug addicts, who were required to undergo medical treatment. In Sweden, a system of civil commitment, similar to that practised in the United States of America, was introduced in 1988. The offender, who had to agree to the arrangement, was put on probation and, under the terms of that probation, had to undergo treatment for drug dependence.

46. The importance of the suspended sentence was reflected in its extensive use by the courts. Since Cuba had introduced its new Penal Code in 1988, 63 per cent of all prison sentences had been suspended. In the Federal Republic of Germany, suspended sentences amounted to 68.3 per cent of the total in 1987 and in Poland to approximately 30 per cent of all convictions in 1986. In addition, many countries reported a trend towards the wider use of the suspended sentence. A number of countries cited probation or suspended sentences as means of avoiding short-term imprisonment.

47. The statistical data provided by some countries demonstrated the success of suspended sentences, as reflected in the low number of such sentences submitted for revocation in comparison with their total number. In Sweden, for example, 8,358 persons were on probation at the end of 1987. During the period 1 July 1986-1 July 1987, a petition for revocation had been made in only 63 cases. In the USSR, the overwhelming majority of persons who had received a suspended sentence did not commit repeat offences but conducted themselves in a positive manner, both at work and in everyday life.

D. Work duty

48. A number of countries reported that in their systems of sanctions, particular emphasis was placed on re-education through work, and that the obligation to perform work could be used as an alternative to imprisonment. The work-duty sanction was called by different names, for example, corrective work without imprisonment in Iraq, the Ukrainian SSR and the USSR, reformative or educative labour in the Byelorussian SSR and the German Democratic Republic,

and limitation of liberty in Poland and Romania. Governments reported that it was used not only as a principal sanction but also as an obligation attached to a suspended sentence. One general characteristic of work-duty was that the offender had to work at a designated work-place, and that a portion of his or her earnings (ranging from 5 to 25 per cent) was retained by the State. In some cases, workers at the offenders' work-place supervised and assisted them and stood guarantee for them. Currently, about 70 per cent of the penalties stipulated in the penal codes of the USSR allowed for corrective work as an alternative to imprisonment; and that penalty was imposed in 25 per cent of all cases.

E. Community service

49. Community service, known for over a century as a substitute for fine-default detention, or even earlier as a substitute for imprisonment in traditional societies, as reported by Nigeria, constitutes a very promising alternative to imprisonment. The legislation introduced in the United Kingdom in 1973, fixing for the first time community service in its present form, has served as a model for a number of countries. Community service involves the obligation to perform a certain number of hours of unpaid work for the good of the community during leisure time, within a given time limit, and is imposed as a sentencing option or condition.

50. The reports showed that community service was used as a punishment mainly for offences considered to be in the middle range of criminality. In so far as non-custodial measures were applicable at all, none of the statutory or experimental regulations excluded particular offences or offenders, in principle, from community service. In some countries, however, for example Denmark, provisional reservations were made for certain offences, such as drunken driving. In France and Switzerland, certain offenders, such as drug addicts or multiple recidivists, were unlikely to receive a community service sentence. In some countries, such as Denmark, the Netherlands and Norway, community service could only be imposed as a substitute for short-term imprisonment. In other countries, it could also be used instead of fines.

51. The advantage of community service lies in the fact that it gives offenders an opportunity to make amends by working for the well-being of others and makes it possible for the community to contribute actively to their integration into society. It also provides an opportunity to educate offenders in social relations. Some countries reported that the form of community service chosen was appropriate to the offence, for example, the offender would work in an area where the offence had caused particular damage. In most countries, emphasis had been placed on associating offenders with voluntary or professional workers. The statutory number of hours of community service to be performed varied considerably from one system to another, ranging from a minimum of 20 hours in New Zealand, 40 hours in Denmark, France, and the United Kingdom and a maximum of 180 hours in Portugal, to more than 2,000 hours in the Federal Republic of Germany. The service must be completed within a time-limit ranging from 6 to 18 months. Non-compliance with the community service obligation imposed as a principal sentence generally led to a prison sentence. Non-fulfilment of community service imposed as part of a suspended sentence led to enforcement of the suspended part of the sentence.

52. Community service, either as a principal sentence or as a substitute for short-term imprisonment in the form of a condition attached to a suspended or conditional sentence, was practised in Australia, the Federal Republic of Germany, Israel, Kuwait, Luxembourg, the Netherlands, New Zealand, Portugal, Sri Lanka and the United States of America, and on an experimental basis in

Denmark since 1982 and in Norway since 1984, where legislation to implement community service in the system of sanctions was being drafted. Adoption of this sanction was being discussed in Bahrain, Barbados, Belgium, Cyprus, Finland and Switzerland.

53. The actual application of community service as an alternative sanction differed considerably in the various reporting countries. The United Kingdom reported over 30,000 community service sentences a year, the Netherlands 5,000 and Denmark 243. In other countries, such as Portugal, community service was applied very restrictively as an alternative sanction. In New Zealand and Sri Lanka, the provisions regarding community service sentencing had recently been amended to enable its wider use to be made of the sanction. In the Bahamas, the formalization of community service as a sentencing option was being considered.

F. Other alternatives

54. A wide range of further alternatives was reported by several Governments. In a number of countries, confiscation of personal property, in particular vehicles, or suspension of driving licences or licences to bear arms or to engage in hunting, could be imposed as a principal sentence or as a supplementary sanction. Such measures could be used as an alternative to imprisonment, as in France and Luxembourg. Other countries, such as Burundi and Spain, reported that local banishment might be used instead of a prison sentence. The restriction of rights, in particular of the right to engage in certain professions or undertake certain activities, was used as an alternative, for example in the USSR. In Cyprus, the Federal Republic of Germany, Greece, the United Kingdom and elsewhere, a compensation order could be used as a substitute for imprisonment. Some countries noted that those alternatives could be combined with a suspended sentence, if the sentence alone was not considered sufficiently punitive by the court, thus leading to a greater use of alternatives.

55. Another alternative to imprisonment was noted by Australia. In appropriate cases a home detention scheme was introduced to keep suitable offenders out of prison. Their prison term might be suspended in favour of home detention, with conditions imposed by a court or by the Director of Correctional Services. The conditions could include counselling, treatment or the obligation to abstain fully or partly from alcohol. All offenders on home detention were subject to strict and random surveillance, both at home and at their place of employment.

56. The mere declaration of guilt by a court, without the imposition of a penalty, was possible as a principal sentence in a number of jurisdictions in Europe, such as Austria, the Federal Republic of Germany, the Netherlands and Portugal, particularly for minor offences, if compensation had been made for the damage or if the offender had suffered personally in committing the offence, and if conditions of general and special prevention were met.

III. POST-CONVICTION STAGE

57. The measures referred to in this section are not alternatives to imprisonment, in a strict sense, but are alternative modes of implementing a prison sentence which, in effect, may lead to a reduction of the actual deprivation of liberty. Semi-detention, semi-liberty, week-end detention, work-release, permission to reside in a therapeutic community outside the prison, conditional release, parole, and a number of other alternative modes of implementation,

have as one of their objects alleviation of the negative effects of imprisonment, while at the same time they provide the means whereby prisoners can improve their personal situation.

A. Semi-liberty or semi-detention

58. A number of countries reported that a prison sentence was not necessarily enforced as an actual deprivation of liberty for 24 hours a day, and that forms of enforcement had been developed that restricted the deprivation of liberty to certain days or certain hours only. Such modes of detention were known as semi-detention, semi-liberty, periodic detention, or week-end detention.

59. Under semi-detention, convicts were allowed to spend the night, and in some cases the week-end, with their families. In the day-time, convicts either stayed in prison, did work connected with prison industries outside prison, or took part in educational programmes or vocational training, which, however, were monitored by the prison authorities. Under semi-liberty régimes, convicts were allowed to spend part of the day outside the prison at their regular jobs, or to continue their education or vocational training.

60. An increasing number of countries, for example Australia, Belgium, Bolivia, Ecuador, France, the Federal Republic of Germany, Italy, Luxembourg, Nigeria, Nicaragua, Sri Lanka, Singapore, Sweden and Switzerland, mentioned that selected prisoners were permitted to serve a part of their sentence in an open or semi-open institution, or that their legislation provided for work-release programmes, whereby prisoners were allowed to work in their former jobs or new ones outside the prison during the last period of sentence. A similar arrangement was known as overnight confinement in Chile and preparatory day-time release in Colombia. The Czech and Slovak Federal Republic reported on the introduction of open wards. In the Bahamas, a non-governmental organization planned to open a halfway house to assist in the social resettlement of offenders. Such measures had the advantage of reducing the hardship imposed on offenders by imprisonment, for example by allowing them to maintain regular contact with their children and other relatives. In addition prisoners could then be in a position to help their families financially. Many countries, such as Sweden, reported on their attempts to facilitate this further by paying prisoners average market wages for their work. Often the prisoner did not personally receive full payment for the work done, since most of the money earned was used to help his or her family. The Czech and Slovak Federal Republic reported that prisoners were entitled to equal remuneration for their work. Attempts were also being made to provide equal working conditions; in Yemen, for example, a prisoner who worked outside the prison was employed on equal terms with other employees, for example as regards hours of work, wages, rewards for excellence etc.

61. Vocational training had gained in importance as an integral part of many non-custodial measures, and an increasing number of countries, for example, Barbados, Burundi, Greece, Lebanon and Morocco, indicated that it was a prime factor in enabling the prisoner to lead a law-abiding life after release, especially when basic vocational courses were offered, such as programmes for illiterate inmates in Greece and Lebanon. In many countries, where specific training facilities could not be arranged in prison, prisoners might be granted leave to continue both vocational training and education, including academic education.

62. Regardless of the terminology employed, semi-detention and semi-liberty were used mainly at a later stage of sentence enforcement, after a prisoner

had served part of the sentence under full deprivation of liberty. It could, however, also be used from the beginning of the sentence. In Italy and the Netherlands, short-term prison sentences could be served entirely in half-open or open prisons, where a convict had to stay only at night and during leisure hours. Placement in open institutions depended mainly, however, on the inmate's progress towards social reintegration and was thus applicable only at the last stage of the sentence, in accordance with certain classification schedules.

63. In some countries, such as Colombia and Italy, prisoners in the transitory phase between deprivation and final release were granted preparatory release or anticipated liberty. During that period, the prisoner was permitted to work and reside outside the prison but was obliged to report periodically to the prison administration.

64. The temporary release of the prisoner could also be secured by other means, for example, by prison leave, as reported by a large number of countries, for example Burundi, Cyprus, Egypt, Indonesia and Turkey. Temporary prison leave was generally granted during the last period of the sentence, allowing the prisoner time to deal with personal problems, such as finding a job or accommodation. The conditions differed and were related to the length of the prison sentence or the period that prisoners had to serve before they were granted leave.

65. A further alternative was periodic detention, in which the convicted offender spent only week-ends or holidays in prison. Periodic detention was used, for example, in Belgium, France, New Zealand and Portugal. In Portugal, sentences of up to three months could be served over consecutive weekends.

B. Conditional release or parole

66. Many countries reported that their prison regulations provided for the establishment of a treatment schedule aiming at resocialization, whereby the prisoner became eligible for more freedom step by step, in particular as regards the type of detaining institution. The prisoner started serving the sentence in a closed institution and could afterwards be transferred to a semi-open and later to an open institution. Conditional release, often referred to as parole, was the last phase.

67. Thus, conditional release was the major means of reducing the actual period of incarceration. The concept of "conditional release" varied considerably, since it was based on diverse ideas and objectives. In some countries, such as Egypt, the Libyan Arab Jamahiriya, Mexico, Qatar and Romania, it was used as a measure to improve discipline in penal institutions. In others, such as China, France, Gabon and New Zealand, it was also seen as a probationary measure. In a third group of countries, conditional release was used to improve the security of society by placing the parolees under strict supervision so as to prevent them from committing new crimes. Finally, countries such as Bolivia, the Netherlands and the United Kingdom also used the option as a means of reducing overcrowding in the prisons.

68. A common feature of conditional release in most countries was that in the case of a positive prognosis (special prevention) the prisoner was released at a certain time, with the further condition that requirements of general prevention must also be met. Since in a number of countries conditional release and suspended sentences were closely linked, conditions similar to a suspended sentence might very often be attached to a release order. The most common condition was supervision for a specific period, generally from one to three

years. In the legislation of most countries, that alternative was used after the prisoner had served part of the sentence specified by statute, which might range from one third, for example in the United Kingdom and Belgium for first offenders, to three quarters, for example in Spain. Some legislation also set an absolute minimum term to be served before a prisoner could be eligible for release. In a number of countries, specific regulations on the minimum period of imprisonment and length of the probation period were issued in the case of conditional release of life-term prisoners. In a number of reports, the view was expressed that limits had to be placed on maximum sentences, if alternatives were to be introduced.

69. The practical application of the provisions on release differed considerably. While some countries required a positive future prognosis, interpreting that condition rather stringently, others generally granted release or parole after the minimum period of imprisonment had been enforced. In Japan, parole was granted to 56.8 per cent of all prisoners in 1987. In Denmark, 90 per cent of all prisoners serving sentences of more than two months were released on parole after serving two thirds of their prison term. In the Netherlands, where new provisions on release had come into force in 1987, all eligible prisoners were automatically released. Prisoners serving a sentence of up to a maximum of one year had to be released after serving six months plus one third of the remaining term. Prisoners serving a sentence of more than one year had to be released after serving two thirds of that sentence. Since the new provisions on release had come into force, the release was no longer conditional but automatic and final, in that it could not be revoked. No conditions could be attached to the release, which was therefore described as "early" rather than "conditional".

C. Other measures

70. A number of countries had introduced into their legal systems further methods of shortening the actual period a long-term prisoner had to serve in detention. A major method, known as "remission" was recognized in the legal systems of Colombia, France, Italy, Greece, Mexico, Spain, Sri Lanka, Thailand and the United Kingdom, one of its common features being that a prisoner could earn remission for good conduct, for work performed, or for special activities, such as serving as a blood donor or passing educational or vocational examinations.

71. Almost all the reporting countries had taken steps to reduce the isolation of prisoners and to facilitate the maintenance of their personal contacts with the outside world, particularly with relatives. Contacts could also be extended to persons belonging to welfare organizations, who could act as intermediaries between prisoners and their families, help prepare them for release, and eventually render assistance after release, although it might be necessary to restrict such outside contacts for security reasons. Isolation might also be reduced by participation in cultural or sports activities outside the institution. Such activities could improve self-confidence and help to prepare prisoners for their release and reintegration into society.

72. In many countries, contacts could be maintained through correspondence and telephone calls from and to prisoners. In some countries, such as the Federal Republic of Germany, day-time or overnight leaves without prison escorts were provided for in the prison regulations, in recognition of the fact that personal contact was preferable. This principle of proximity is of particular importance, as a long distance between the prisoner's residence and the place of detention tends to impede such contact. In Canada, therefore, offenders could be transferred from one prison to another so that they could

be nearer to their home communities and families. Another way in which the disadvantages of distance could be overcome would be to permit visits by persons other than relatives who could be expected to stay in contact with the prisoner after release.

73. Foreign prisoners with no roots in the country of detention have particular problems in maintaining or establishing contact with the outside world. Their isolation is often increased by the barrier of a different cultural background or language; high travel costs often prevent relatives from visiting them. Thus, specific regulations may be considered and implemented, providing for visits of volunteers of the prisoner's nationality or language. Whenever relatives visit, exceptional regulations may extend the time they are allowed to spend together, taking into account the fact that the foreign prisoner is usually not in a position to receive visits when they are normally allowed by the prison régime. International legal assistance and co-operation could also further the aims of penal sanctions and contribute to a decrease in the foreign prisoner's disadvantages, for example: the transfer of prisoners to their countries of nationality or domicile to serve their sentences, or even the transfer of criminal proceedings, whereby repatriation could even be effected prior to the suspect's conviction. Nigeria, for example, reported having recently entered into bilateral agreements with Benin and Ghana for the exchange of prisoners. Similar bilateral or multilateral agreements existed between a number of European countries.

74. The United Nations Model Agreement on the Transfer of Foreign Prisoners and recommendations on the treatment of foreign prisoners, 2/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, was aimed at promoting such developments. The Eighth Congress will consider the draft model treaty on transfer of supervision of offenders who have been conditionally sentenced or conditionally released, which, if adopted, will facilitate the conclusion of bilateral and multilateral agreements.*

75. Apart from prison leave at the last stage of the sentence, in many countries furlough was also granted in special cases, for example, for death or birth in the family, examinations, educational or vocational training or for any kind of medical treatment. According to the prisoner's behaviour, personality and prospects, the kind of crime committed and the supposed danger for society, the special leaves were granted with or without supervision by a prison officer, either in uniform or in civilian clothing.

76. Although prison leaves might increase the danger of the prisoner absconding, the data provided point to the success of such measures. In the Federal Republic of Germany, the annual number of prison leaves increased from 227,800 to 258,594 between 1983 and 1986, while the percentage of absconders dropped from 1.9 to 1.3. Sri Lanka reported that out of 1,489 long-term prisoners granted seven days' home leave, only two had violated the conditions imposed.

77. The actual term of imprisonment could also be reduced by acts of grace, pardon or amnesty. Some of those benefits might be granted unconditionally, others subject to certain conditions, as reported by Chad and Zimbabwe, where prisoners had been released on several occasions through general amnesties or

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*See the working paper prepared by the Secretariat on United Nations norms and guidelines in crime prevention and criminal justice: implementation and priorities for further standard-setting (A/CONF.144/18).

other acts of grace. In the Czech and Slovak Federal Republic, as a result of two successive amnesties by the end of 1989 and early 1990, about two thirds of all prisoners had been released.

78. According to the legislation of the USSR, an offender released conditionally could also be released from additional punishment imposed in the form of exile, banishment or disqualification.

IV. INVOLVEMENT OF THE PUBLIC

79. As in the past, many countries stressed the need to keep the general public informed and to seek its involvement. The acceptance of alternatives to imprisonment by the general public is vital for the success of alternative measures. For this reason, the public has to be - and, in practice, in many countries is - informed of planned and implemented legislation in order to promote understanding and acceptance of it. The co-operation of the public in the application of alternatives, as well as in the after-care of released prisoners, is equally important. In France, for example, a campaign had been conducted by the National Council for the Prevention of Delinquency to acquaint citizens with the need for crime prevention and promotion of the rehabilitation of offenders in the community. Autonomous local entities, private organizations and volunteers had participated in the campaign, which used the mass media and various other means of communication to inform the public and increase its sensitivity to the problem. In other cases, private enterprises had participated in programmes aiming at the integration of unemployed offenders by providing work that prisoners could continue to do after release. The United Kingdom reported on the recent publication of two major policy papers on the involvement of the private sector in the remand system and punishment, both in custodial methods and treatment in the community. In order to involve the general public in the new policy, the Government solicited comments on the proposals set out in its policy papers.

V. CONCLUDING REMARKS

80. Member States indicated a continuing interest in non-custodial measures as alternatives to imprisonment, as already noted in the previous report on the subject to the Seventh Congress (A/CONF.121/13). As factors contributing to this trend, States mentioned prison overcrowding, rising costs of maintaining, expanding or building prison facilities, and the belief that imprisonment should be used only as a last resort. In a number of cases, the expansion of non-custodial measures was seen as part of a general move towards depenalization. The diversion of offenders from prison to non-custodial alternatives was, however, countered by a contrary trend in some countries, where tougher measures and fixed, longer sentences had been introduced in line with a retributive approach. That trend is reflected in the results of the Second United Nations Survey of Crime Trends, Operations of Criminal Justice Systems and Crime Prevention Strategies.* Concern was also expressed in some replies that the new low-scale penal sanctions might be applied in addition to already existing sanctions and not as alternatives to imprisonment, thus leading to

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*Contained in a technical publication to be issued by the Secretariat. See also the working paper prepared by the Secretariat on criminal justice policies in relation to the problem of imprisonment, other penal sanctions and alternative measures (A/CONF.144/10).

a higher level of control and an increase in sanctions altogether ("net-widening effect"). The Eighth Congress may therefore wish to review current penal policies and their effects on both the use of non-custodial measures and prison overcrowding.

81. Countries reiterated the need for further exchanges of information and experience, and repeatedly called for increased international support through technical assistance and advisory services, in particular through the United Nations system. It was emphasized that special initiatives, including further comparative research, evaluation of the success of the various non-institutional options and intensified training to extend their use would further the application of more effective and humane non-custodial measures within the criminal justice systems.

82. In various replies it was stressed that non-custodial measures in general seemed to be no less effective and could ensure public safety to an extent comparable to imprisonment without the latter's adverse effects and high cost.

83. It was also noted that the scope of non-custodial measures could be wide enough to allow the application of appropriate alternatives at all levels of the criminal justice process, including the pre-trial and trial phase. The great number of persons reported to be held in detention on remand and the long time served before trial by many prisoners were of special concern to States. An extended use of non-custodial measures could help to alleviate that situation. Some replies suggested that the discretionary power of the judicial authorities responsible for pre-trial detention needed to be broadened in order to apply such sanctions, with proper guarantees regarding accountability and the protection of the basic rights of offenders. The draft United Nations standard minimum rules for non-custodial measures* which are before the Eighth Congress, contain specific recommendations.

84. The need for a wide range of measures at the trial stage, also dealt with in the draft United Nations standard minimum rules for non-custodial measures,* is well illustrated by the example of fine defaults. While in the past fines were considered to be a non-custodial sanction functioning relatively well, a number of replies indicated that, owing to the economic crisis facing many countries, the number of fine defaults leading to imprisonment for circumstances beyond the offender's control was increasing rapidly. At the post-conviction stage, alternatives to confinement in closed prisons could be more frequently applied, in so far as that would be compatible with the seriousness of the offence, the characteristics of the offender, and the protection of society.

85. It was noted that practical reasons, such as lack of proper information, lack of resources, qualified personnel and lack of structure to administer programmes, often hindered the effective use of alternatives. In some countries where a wide range of alternatives existed, legislation often restricted their application to certain types of offences or types of offenders. It may be opportune to review such restrictions. In cases where available alternatives are not applied by criminal justice practitioners, even though they

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*See Official Records of the Economic and Social Council, 1990, Supplement No. 10 (E/1990/31), chap. I, sect. C, decision 11/108. For further details of earlier discussions, see also A/CONF.144/IPM/4 and Official Records of the ECOSOC, 1990, Supplement No. 10 (E/1990/31), chap. IV.

are available, prosecutors, judges, probation officers, lawyers and other interested persons need to be properly informed of the advantages of alternatives and of the experience gathered so far, and encouraged to make better use of them.

86. For the successful application of alternatives, the active participation of the media, the community and the public at large is certainly needed. Many countries reported on the successful use of volunteers. Contacts with social welfare organizations, employment exchanges, and other services were provided by numerous States, in appropriate cases. They helped to stabilize the offender's situation in the local community, and acted as intermediaries between the offender and public institutions, employers, the neighbourhood or the family, as necessary.

87. Non-custodial measures could be applied to foreign offenders as well. In appropriate cases those measures could be carried out in the offender's country of origin or domicile. International co-operation could help to establish a system of supervision of those foreign offenders, allowing them to return to their country of origin or domicile while at the same time providing judicial authorities with the possibility of supervising the offender's compliance with the conditions set up. Bilateral and multilateral agreements for supervision in the offender's country could be concluded. Further harmonization of legislation on suspended sentences, probation and other alternatives to imprisonment would facilitate the conclusion of such agreements. A draft United Nations model treaty on the transfer of supervision of offenders conditionally sentenced or conditionally released is before the Eighth Congress for this purpose.*

88. The importance that non-custodial measures have acquired as separate, independent penalties is reflected in the development of international standards for their application. The Eighth Congress has before it the draft United Nations standard minimum rules for non-custodial measures,** which provide a set of basic principles as well as minimum safeguards. The rules would be applicable to all persons subject to prosecution, trial or the execution of a sentence. If adopted, the rules would be an important instrument to promote the further use of non-custodial measures while at the same time providing a legal framework for their application with a view to balancing the concern of society for public safety and the rights and needs of individual offenders and victims.

Notes

1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985 (United Nations publication, Sales No. E.86.IV.11), chap. I, sect. E.

2/ Ibid., sect. D.

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*See Official Records of the Economic and Social Council, 1990, Supplement No. 10 (E/1990/31), chap. I, sect. C, decision 11/121. See also the working paper prepared by the Secretariat on United Nations norms in crime prevention and criminal justice: implementation and priorities for further standard-setting (A/CONF.144/18).

**See Official Records of the Economic and Social Council, 1990, Supplement No. 10 (E/1990/31), chap. I, sect. C, decision 11/108. For further details of earlier discussions, see also A/CONF.144/IPM/4 and E/1990/31.

UNITED NATIONS

EIGHTH
UNITED NATIONS CONGRESS
ON THE PREVENTION OF CRIME
AND THE TREATMENT OF OFFENDERS
Havana, Cuba, 27 August to 7 September 1990

Distr.
GENERAL

A/CONF.144/13
1 June 1990

ORIGINAL: ENGLISH

Item 4 of the provisional agenda*

CRIMINAL JUSTICE POLICIES IN RELATION TO PROBLEMS OF IMPRISONMENT, OTHER PENAL SANCTIONS AND ALTERNATIVE MEASURES

Research on alternatives to imprisonment

Report of the Secretary-General

Summary

This report contains background information for the Research Workshop on alternatives to imprisonment, including an overview of research, projects and legislation on non-custodial sanctions, and an inventory and classification of non-custodial sanctions, based on an analysis of the functions of imprisonment and alternative sanctioning. The drawbacks of imprisonment, both to the offender and to society, have led to a growing interest in non-custodial sanctions. Imprisonment is still, however, the predominant sentence. Non-custodial sanctions are used far less than the law would allow and their implementation is hindered by the absence of structures and funds. There is a trend towards diversification of such sanctions and their extension to a greater range of offences and offenders. Classical non-custodial sanctions are being used to a larger extent and new ones often incorporate a number of conditions, such as work, compensation or restitution, and treatment. "Traditional" sanctions are meeting with renewed interest. Interest in standard-setting is also growing, with an emphasis on legal safeguards. More research is needed on statistical data, effectiveness, factors influencing decision-making and sentencing attitudes, and promotion strategies.

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*A/CONF.144/1.

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INTRODUCTION

1. The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 16, recommended to Member States that they should "intensify the search for credible non-custodial sanctions" and requested the Committee on Crime Prevention and Control to encourage the United Nations regional and interregional institutes to strengthen their programmes, inter alia, so as to give all possible assistance to Member States in undertaking research on this subject. 1/ Subsequently, the Economic and Social Council, in its resolution 1987/49, requested the Secretary-General to include research workshops on appropriate topics related to the substantive items of the provisional agenda as an integral part of the Eighth Congress. Following consultation with the institutes concerned, the topic "alternatives to imprisonment" was proposed for one of the workshops. The Fourth International Conference on Research in Crime Prevention, held at Riyadh on 13 and 14 January 1988, adopted the concept and structure of the proposed research workshop.

2. The proposed preparatory activities for the Eighth Congress, including the research workshop, were approved by the Committee on Crime Prevention and Control at its tenth session and were subsequently endorsed by the Economic and Social Council in its resolution 1989/69 and approved by the General Assembly in its resolution 44/72. The present document has been prepared by the United Nations Interregional Crime and Justice Research Institute, formerly the United Nations Social Defence Research Institute, in close co-operation with the Crime Prevention and Criminal Justice Branch, to facilitate consideration of the material at the research workshop which will take place during the Eighth Congress. The Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, the African Regional Institute for the Prevention of Crime and the Treatment of Offenders, the Arab Security Studies and Training Centre, and the Australian Institute of Criminology have collaborated with the United Nations Interregional Crime and Justice Institute in the preparation of the workshop.

3. Following the practice of previous United Nations congresses, the latter Institute was entrusted with the responsibility for the scientific and organizational co-ordination and conduct of the Research Workshop, with the full involvement of the relevant institutes and a number of institutions and individual experts from various regions. Two preparatory expert meetings were held at Riyadh on 19 January 1989 and on 14 to 15 January 1990, to review the results achieved and their scientific and policy significance.

I. DEFINITION AND DELIMITATION OF THE TOPIC

4. Imprisonment still remains the cornerstone of the present penal systems, despite efforts to decrease its use. Those guilty of a broad range of offences are deemed to deserve incarceration. Yet the drawbacks of imprisonment, both to the offender and to society, have become increasingly recognized. A worldwide search has therefore been under way for non-custodial alternatives, and for ways of alleviating the situation of prisoners. This search for "credible non-custodial sanctions" has generated much legislation, research and

projects.* Since the basic sentencing options are limited, (for example, probation, deprivation of certain rights, community service, restitution, compensation and fines), parallel developments have taken place in many countries. This is also the rationale behind the Research Workshop on alternatives to imprisonment at the Eighth Congress.

5. The present report is based on documentation prepared for the Research Workshop, containing regional reports for Asia and the Pacific, the Arab countries, Europe, Latin America and the Caribbean; country reports from Canada and the United States of America; country-based case studies on home detention (Australia), release on personal recognizance (Costa Rica), work on liberty under surveillance (Hungary), probation (Japan), community service (the Netherlands), personal reparation (Nigeria), diyya - a form of reparations - (Saudi Arabia), and electronic monitoring surveillance (United States); replies from Member States in response to a note verbale by the United Nations Secretariat used for a report of the Secretary-General on alternatives to imprisonment and reduction of the prison population (A/CONF.144/12); a report prepared by the Secretariat analysing replies to the Third United Nations Survey on Crime Trends, Operations of Criminal Justice Systems and Crime Prevention Strategies (A/CONF.144/6), and an international bibliography for the period 1980-1989 with a review of related literature.

6. The documentation for the Research Workshop is not a global inventory or an exhaustive analysis of non-custodial sanctions. The regional reports present a broad picture of the different types of non-custodial sanctions in use today. The country-based case studies illustrate different types, ranging from traditional to modern, involving different kinds and forms of supervision, administered in the context of different infrastructures. This material will be made available to the Workshop by the United Nations Interregional Crime and Justice Institute.

7. Throughout the present report, reference will be made to "non-custodial sanctions" and not to "alternative sanctions".** The latter term implies that imprisonment is the norm and that all other measures are secondary. The scope of report is limited to non-custodial sanctions considered at the time of adjudication. A "sanction" is to be understood as a measure used for the deliberate punishment of the offender by the State in response to an offence. This limitation to non-custodial sanctions implies that the report does not deal with:

(a) The pre-adjudicatory stage, for example decriminalization, diversion and discontinuance of proceedings, with the exception of pre-trial detention;

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*For research and related material, see "International bibliography on alternatives to imprisonment, 1980-1989" (United Nations Interregional Crime and Justice Research Institute, Research Workshop document).

**Other possible terms in wide use include "community sanctions", "community-based sanctions", and "intermediate sanctions". The latter is used in the United States to refer also to those that fall between prison and non-custodial sanctions. See Annesley K. Schmidt, "An overview of intermediate sanctions in the United States"; Department of Justice, Canada, "Intermediate sanctions in Canada" (United Nations Interregional Crime and Justice Institute, Research Workshop documents).

(b) Measures imposed outside the criminal justice system. Such measures, which may involve institutionalization or other types of confinement, can be imposed, for example, on the basis of administrative law, military law or social welfare law;

(c) Alleviation of imprisonment (for example, such sanctions as short-term imprisonment, semi-liberty or semi-detention, and such measures as furlough and early release. Their use should be encouraged, but they remain essentially variants of imprisonment);*

(d) Non-custodial measures such as assistance in obtaining housing, treatment or employment.

The report likewise discusses measures that are applicable to adult offenders. In many juvenile justice systems, imprisonment does not have the same fundamental position as it does in the adult criminal justice system. Where imprisonment is used, the issues are largely the same as for an adult offender.

8. The report touches upon measures intended to limit pre-trial detention. Many of the problems connected with sentences of imprisonment are also evident with pre-trial detention. Moreover, in many countries, in particular in Latin America, a large proportion (or even the majority) of those held in prison are on remand. 2/ Attempts to reduce imprisonment should begin with the "front end" of the system, the decision to place a person in pre-trial detention.

II. FUNCTIONS OF PUNISHMENT

A. Functions and dysfunctions of imprisonment

1. Imprisonment as a sentence

9. Imprisonment is considered the most severe form of punishment in most contemporary criminal justice systems.** There is broad agreement about what offences "merit" imprisonment, for example those involving serious danger to life, health and well-being, serious trafficking in illicit drugs, serious economic crime, serious offences against the environment and offences that seriously endanger national security.*** Imprisonment is also considered to

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*Two regional reports: Asia and the Pacific and Latin America and the Caribbean, deal with these measures. See Hiroyasu Sugihara and others (United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders), "An overview of alternatives to imprisonment in Asia and the Pacific Region"; Elias Carranza and others (United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders), "Alternatives to imprisonment in Latin America and the Caribbean" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

**With the exception of capital punishment and some forms of corporal punishment (where they exist).

***Legislation often specifies that non-custodial sanctions are not deemed appropriate, or prohibits their application, when the offence in question is punishable by imprisonment of a certain length. Norman Bishop, Non-Custodial Alternatives in Europe, HEUNI publication No. 14 (1988), p. 50.

be necessary for certain kinds of offenders but the characteristics of those offenders are often denoted in a broad and vague manner and commonly relate to their previous criminal history and record.

10. For less serious offences and for other types of offenders, there is considerably less unanimity on whether or not imprisonment should be imposed. If imposed, it would tend to be for a short term only.

11. Imprisonment can serve many functions. It is commonly justified by its presumed deterrent, incapacitative and rehabilitative functions, as well as by the public demand for a severe response to serious offences. The relative importance of these elements and the extent to which they are taken into account vary from one judge to another.

12. Scepticism about prison as a place of treatment has now been reflected in formal criminal policy in many countries. Imprisonment is often described as a sanction that may have serious negative effects on the great majority of the prisoners and on their social situation. With some notable exceptions, there is considerable evidence that the prospects for satisfactory adjustment in society are made worse by imprisonment. Another factor is the high cost of running a prison system - both in maintenance and capital costs. Today, the resources available are severely restricted. When a prison system is required to take in too many prisoners, overcrowding results, further hampering any attempt to alleviate the negative consequences of imprisonment. For these reasons, imprisonment should not be used where a non-custodial sanction will do, except as a measure of last resort.

2. Pre-trial detention

13. Persons suspected of offences of a certain level of seriousness, suspects who refuse to identify themselves, and suspects who the authorities fear will attempt to abscond, hinder the investigation of the offence or commit new offences are, under certain conditions, held in remand even where the system of habeas corpus is applicable. The principle of the presumption of innocence, together with the principle of minimum necessary intervention, argue for as limited a use of pre-trial detention as possible.

14. When criminal justice operates with dispatch, remand or pre-trial detention is generally quite brief. It is also generally taken into account when sentencing the convicted offender. In practice, however, the criminal justice system of many countries operates slowly. Moreover, many of those held in pre-trial detention can ultimately be sentenced to a non-custodial sanction or even acquitted, or the time spent on remand may be longer than the sentence imposed.

B. Functions and dysfunctions of non-custodial sanctions

15. The arguments for non-custodial sanctions reflect the arguments against imprisonment. First, they are considered more appropriate for certain types of offences and offenders. Secondly, they avoid "prisonization", promote integration back into the community for further rehabilitation and are generally more humane. Thirdly, they are usually less costly than imprisonment. Fourthly, by decreasing the prison population, they ease prison overcrowding and thus facilitate the administration of prisons and proper correctional treatment.

16. The main arguments against the greater use of non-custodial sanctions are that they are not as effective as imprisonment in deterring other members of

the public from committing offences, that they do not incapacitate the offender, and that they do not sufficiently demonstrate the reprobation of the offence by society. In brief they are considered too lenient.

17. Appropriateness. A wide range of petty offences are not judged to be "worthy" of imprisonment. In addition, non-custodial sanctions are also deemed appropriate for certain types of offenders, or offenders with certain characteristics, such as first-time offenders, where there is little likelihood of recurrence, and those whose past behaviour, repentance, and status in the community give reason to believe that the offence was not typical. 3/ The offender's willingness to participate in a non-custodial programme, the ties of the offender to the community (for example family and employment), and the availability of resources for non-custodial programmes (for example supervisors, space, even technological infrastructure) also help to determine appropriateness. Another consideration is the extent to which non-custodial sanctions can be made to accord better institutional custody with the characteristics of the offender. For these reasons, they serve to individualize treatment.

18. Rehabilitation. One of the main arguments for non-custodial sanctions is that they do not hinder but may indeed facilitate readjustment to society. Prisons have difficulty in preparing offenders held in detention for life in the outside world. The ordinary method for assessing the success of rehabilitation is to study recidivism. The assumption is that a greater use of non-custodial sanctions will increase recidivism. Problems in defining and measuring the link between recidivism and the type of sentence are commonplace in research. But recidivism is a rate of effectiveness that has to be handled with caution. Studies on the amount of recidivism at the end of a follow-up period following different disposals do not suggest that non-custodial alternatives lead to a significantly greater degree of recidivism than custodial sentences.* Another method to measure the effects of non-custodial sanctions is to consider the success rate. The assumption is that the successful completion of a programme indicates the likelihood of its having achieved its purposes, including rehabilitation. The problem is that non-custodial sanctions tend to be used where there is a considerable likelihood of success (some programmes have great control over admission). This means that the programme is applied to a selective profile of offenders, who are usually asked to give their consent. These factors tend to complicate assessments.

19. Cost reduction. A third supporting argument often advanced is that non-custodial sanctions are less costly. Costs can, however, be variously defined and measured. One may speak of the immediate financial costs of the adjudication or the enforcement of sentences, of the indirect financial costs

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*See Matti Joutsen and Norman Bishop, "Non-custodial sanctions in Europe: regional overview" (United Nations Interregional Crime and Justice Institute, Research Workshop document). A Dutch study compared offenders sentenced to community service in 1981 with those sentenced to short-term unconditional imprisonment for similar offences in 1980. It emerged that 42 per cent of the community service group and 54 per cent of the matched custodial group reoffended during the three-year follow-up period. Also, Norway reported that no more crimes appeared to have been committed by offenders receiving a community service order than by those sentenced to imprisonment.

resulting from an increase or decrease of crime, of the human costs both to the offender and to the victim, of the wider social costs and so on. What is generally implied is that a wider use of non-custodial sanctions would allow the State to administer the enforcement of sanctions more cheaply. It must not be forgotten, however, that the total amount of savings realized through the use of a cheaper sanction depends on how often this sanction is applied and may be balanced by other factors. Comparisons of per diem costs alone oversimplify the issue. Fines and penal warnings are cheap (fines even bring in revenue), but probation and community service require an organized, skilled and professional corps of workers. Furthermore, minor cuts in prison rates would not reduce the maintenance costs. In addition, the possible net-widening effect of non-custodial sanctions (more persons are processed and controlled, including those who in other circumstances would not have had sanctions imposed on them) may increase costs. Moreover, the human and ethical factors ("costs") should also be taken into consideration with the related social costs. For example, home detention and electronic monitoring have been said to place a burden on the immediate environment, such as the family of the offender; this can be deemed a social cost. 4/

20. Reduction of the prison population. The greater use of non-custodial sanctions is commonly expected to reduce the prison population. This can be understood in two ways: either such sanctions reduce the number of offenders in prison at any one time, or they reduce the number of offenders entering prison. The impact of the first is reduced by the fact that non-custodial sanctions generally replace only the shorter prison sentences and thus have little practical effect on the over-all size of the prison population. Other circumstances (such as rising crime rates) could lead to more, or more severe, prison sentences, making it difficult, if not impossible, to determine whether non-custodial sanctions actually fulfil this function. The effectiveness of non-custodial sanctions cannot be judged solely on the basis of whether they reduce the prison population. Even if their greater use does not decrease the number of offenders in prison at any one time, it may reduce the number of persons entering prison. Such a function could have two benefits, one related to criminal policy and one to prison administration. If prison does, indeed, have a negative effect on offenders, than it is desirable to limit the use of imprisonment to the fewest possible offenders. Also, reducing the number of cases that have to be processed in prison decreases the work-load of prison administrations.

21. Effect on crime rates. The main argument against non-custodial sanctions is that, because of their leniency, they do not deter people from committing offences. There are serious methodological difficulties in studying the effect that a change in sentencing policy may have on public attitudes and behaviour, and on the over-all crime rate. The few existing studies suggest that the use of imprisonment is not decisive for the general level of crime control. It may thus be that high rates of imprisonment do not curtail crime in general, nor do low rates encourage it. There is also a lack of clear empirical evidence for asserting that the extended use of non-custodial sanctions leads to an increase, decrease or stabilization of crime rates. It is generally held that other factors, such as the likelihood of detection and the certainty of punishment are probably more important. Taking into account the drawbacks of imprisonment, and in the absence of appreciable evidence to the contrary, it would appear that a wider use of non-custodial sanctions does not lead to any substantial increase in criminality, especially when the sanctions are properly planned and implemented and have the full support of the community and the public.

III. INVENTORY AND CLASSIFICATION OF NON-CUSTODIAL SANCTIONS*

A. Measures for the avoidance of pre-trial detention

22. When the offence is a serious one, the use of pre-trial detention is determined by the severity of the probable sentence. The law may state, for example, that if the minimum punishment for the offence is two years' imprisonment, the suspect shall be detained. Release pending trial would be possible only if there were important grounds for release. In such cases, the use of pre-trial detention can be restricted by raising the minimum punishment stipulated or by granting the authorities more discretion as to whether or not to release the suspect pending trial.

23. In cases where the suspect refuses to identify himself or herself, pre-trial detention is often used for the (presumably brief) period it takes to ascertain identity. Detention can be reduced by making the identification of suspects more efficient (namely through mandatory identification documents or the computerization of fingerprints and other identifying characteristics).

24. It is in connection with a third set of criteria, that is to say, when the authorities fear that the suspect will attempt to abscond, hinder the investigation of the offence or commit new offences, that there is the greatest amount of discretion remains and the greatest potential for restricting pre-trial detention. Success would thus lie the ability to prevent the suspect from engaging in any of these activities. This could be done in a variety of ways, as outlined below.

25. Restriction of movement. The most restrictive measure to avoid pre-trial detention requires that the suspect stay within a certain area or premises, most commonly his or her home. Violation may lead to pre-trial detention. Observance is generally enforced through constant monitoring by the local police. Such monitoring can also be carried out electronically.

26. Supervision. A less restrictive measure requires that the suspect awaiting trial submit to supervision primarily in order to ascertain that he or she has not absconded. The suspect may be required to report to the police or another agency at intervals, or a representative of the agency may make random checks. The measure may include not only a prohibition against leaving the locality without prior permission but also conditions more directly related to the offence. Examples would include disqualification from driving in the case of a suspected traffic offence, or from engaging in certain business transactions, in the event of a suspected economic offence. Instead of a representative of an official agency, the supervisor may be another member of the collective in which the suspect works, a close relative, or simply a private citizen who agrees to act as a supervisor or as a guarantor that the suspect will come to trial.

27. Payment of bail. Bail can be understood in a narrow and a wide sense. In some jurisdictions, it is widely understood as release pending trial. In the more common, narrower sense, it is understood as the posting of property or money as surety that a person released from custody will appear in court

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*Many possible classification schemes can be used. The one used here is based on the degree to which the State intervenes in the life of the offender but of course it is difficult to establish the exact extent of intervention.

at the appointed time. Some systems require the bailee to report at regular intervals to the local police station, while others require other types of supervision. Bail in the narrow sense is in common use in many countries. Its primary drawback is that it can be discriminatory for poorer suspects who cannot afford bail or are not able to find a bondsman to post bail for them. An alternative is "binding over". This involves a court order to keep the peace. Should the suspect violate the order, he or she may be fined or detained, or the order may be otherwise amended.

28. Release on recognizance. The most common measure for avoiding pre-trial detention is simple release on recognizance, whereby the suspect promises to appear before the court when the case comes to trial. This "bail" does not involve the posting of property or money as surety. Research in one country reveals that while recognizance is frequently used for minor offences, it is not applied for serious offences (for example more than three years' imprisonment). 5/ The main reasons lie in the attitudes of judges and defence lawyers, and in the sentencing practice of the higher courts. The research-monitored experiment on the application of this measure for serious offences revealed that the main argument against its use was not sustained; as regards compliance with the obligation to appear before the court, there was no significant difference between suspects released on recognizance and those released on economic surety.

B. Non-custodial sanctions

1. Sanctions that imply supervision and control

29. Probation and suspended or conditional imprisonment with supervision. Of those measures that imply considerable supervision and control of the offender (suspended or conditional imprisonment with supervision, probation, community service, reformative and educational labour, special forms of treatment and local banishment), the most common are probation and suspended or conditional incarcerative sanctions with supervision or some form of treatment. The common element is that the offender is convicted, but is given the opportunity of not serving a sentence (which may or may not be specified) under certain conditions, most commonly that he or she does not commit a new offence during the probationary period. This category of non-custodial sanctions is present in almost all criminal justice systems, in one or more variants. Although its use is increasing in some jurisdictions, in others it is decreasing, and in still other jurisdictions it is being combined with other categories of non-custodial sanctions.*

30. Supervision can be intensive, moderate, or minimal. With intensive supervision, the offender is kept under close control in order to reduce the opportunities for recidivism, integrate the offender into society and ensure that the conditions of probation, or suspended or conditional imprisonment are met. At the other end of the scale, minimal supervision entails only sporadic contacts between the offender and the supervisor, with little attempt at reintegration. The supervision can be exercised by professionals, volunteers or members of the collectivity in which the offender works or lives. 6/

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*One example is described in Masakazu Nishikawa (United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders), "Adult Probation in Japan" (United Nations Interregional Crime and Justice Research Institute, Research Workshop document).

31. In some countries, violation of probation does not automatically lead to obligatory and immediate revocation. Options may be a judicial warning, fines, an amendment of the conditions or an extension of supervision. Should the violation of probation lead to enforcement of a prison sentence, various modalities exist. The length of the sentence may be specified in the original sentence; the court may be granted some discretion to modify this length; or the length of the sentence may be set after a violation of probation occurs.

32. Community service. This is a fairly recent innovation. The sanction involves a certain number of hours of unpaid work for the good of the community, usually during leisure hours. Most systems stipulate the prerequisites under which a community service order can be made; for example, the type of offence and the consent of the offender. 7/ The use of this type of sanction has spread to a number of countries. A similar one has existed in the socialist countries for a long time, 8/ but with the main difference that the sanction is enforced during working hours and relies heavily on the support and supervision of co-workers. A second difference is that it does not require the offender's consent. One of the arguments often made on behalf of community service is that it provides for community involvement in the integration of the offender into society. Although little research exists to support this argument, it can, however, be presumed that the community's commitment can be enhanced when the service is performed within the context of community organizations or structures already in place.

33. Home probation. In home probation (home detention, home confinement or house arrest), the offender is required to stay at home for a specified period (generally, two or three months). Confinement may be limited to night-time, or to night-time and leisure hours. It may also be full-time for 24 hours a day. The conditions may include full or partial abstinence from alcohol, counselling or treatment for substance abuse. Offenders are generally subject to strict and random surveillance, either face-to-face or through electronic monitoring.

34. Electronic monitoring, also referred to as "tagging", uses recently developed technology to ensure compliance with home confinement, requiring that the offender remain within a designated area during a specified period of time. 9/

35. The benefits of home probation are, first, that the offender's movements are so restricted the he or she is inhibited from committing further offences, unless they are self-inflicted (e.g. drug-taking) or are directed at others in the household; there may perhaps be some other exceptions, such as giving advice that may be construed as abetting in an offence. Secondly, it is flexible. It can be implemented anywhere within the reach of current technology (if, indeed, technology is necessary), and conditions can be modified to allow for participation in different activities outside the home. As with other non-custodial sanctions, home probation allows the offender to maintain family ties and to continue with his or her work or studies. 10/ It is also less costly than prison, regardless of whether or not electronic monitoring is used. There are, however, some technical difficulties, as well as legal and ethical problems, involved with home probation combined with electronic monitoring. 11/

36. Open, ambulant or contract treatment. This is an option used in only a few countries, for categories of offenders where medical or psychiatric expertise suggests that there is a connection between the offence and, for example, drug addiction or a drinking problem. As a result of unfortunate experiences with forced treatment in the earlier part of this century, the consent of the offender is often a pre-condition for rehabilitation of this sort.

2. Sanctions that do not require supervision and control

37. There is less State intervention in the application of non-custodial sanctions that constitute, in essence, a penal warning. Such sanctions may be of varying severity.

38. Conditional sentence without supervision. In certain serious offences, where the offender is considered to have been hitherto of good character or where there are other mitigating circumstances, some systems recognize the possibility of a conditional sentence of imprisonment without supervision. The offender is thus not subjected to any control. If, however, the offender commits a new offence during the term of the sentence, the court may order that the conditional sentence be enforced.

39. Penal warnings. Penal warnings are customarily used if the offence is not serious and the offender is considered to have been hitherto of good character. They are known by a variety of names, including admonition, absolute discharge and conditional discharge. Release on recognizance or release on a bail order after adjudication related options: the offender is convicted, but sentencing is postponed until a later date. His or her behaviour in the interval is taken into consideration in deciding on the final sentence.

3. Monetary payments

40. Fines. Like penal warnings, monetary payments involve minimal State intervention. Fines are the best known and most widely used form of monetary sanction. They save money and labour, and are practical to manage and administer. They are also humane, since they cause a minimum of social harm. Fines can, however, create inequities by discriminating against the poor, for whom non-payment often means imprisonment. This disadvantage can be overcome by imposing a day-fine, by setting limits on the conversion of unpaid fines into imprisonment, by granting a postponement of payment, by allowing the fine to be paid in instalments, or by giving the court discretion over whether or not the fine shall be converted to imprisonment. Fines can also be conditional. In addition, some jurisdictions use good-behaviour bonds whereby the offender pledges to keep the peace and be on good behaviour, failing which he or she will be brought before the courts.

41. Compensatory payment. Compensation orders and the like, as independent sanctions, are offered in only a few countries. They can be imposed as one of several terms of a conditional sentence. Generally speaking, compensation and restitution remain civil matters, even if in many jurisdictions they are often imposed by a criminal court. Restitution of the loss to the victim, a method traditionally used in customary justice systems, is deemed an appropriate aim of criminal justice, and is usually in the interests of society as a whole.*

42. Personal reparation. This pre-dates imprisonment, and is a common form of compensatory payment and part of the reconciliation procedure in almost all African societies. 12/ It is widely used in customary law and, to a much lesser extent, in formal criminal justice systems. In the latter, it is

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*In some countries, however, restitution programmes are ineffective, inefficient and inequitable. See, for example, Annesley K. Schmidt, "An overview of intermediate sanctions in the United States" (United Nations Interregional Crime and Justice Research Institute, Research Workshop document).

frequently combined with restitution and a fine; default often leads to imprisonment. Research reveals that personal reparation, being culturally well established, could be more widely used.

43. Reconciliation. Often tied to compensatory payments, reconciliation is generally considered as an option only during the preliminary stages of the criminal process, for example during the police investigation or as a measure implemented outside the State-based criminal justice system. In the latter case, the structure in which reconciliation takes place can be traditional (such as the village courts in Papua New Guinea or the Lupong Tagapayapa in the Philippines), or of more recent origin (such as the social courts). In some countries, however, reconciliation is also an option at the adjudicatory stage, even for offences in the medium range of seriousness, where imprisonment might be a possible sanction.

44. Confiscation. In many systems, forfeiture or confiscation of personal property is used as an independent sanction, and appears to be expanding. This trend is encouraged by the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (E/CONF.82/15 and Corr.1 and 2). Generally, however, confiscation of the property derived from or used in the offence is considered a penal measure, to be applied in addition to a sanction and not as an independent penal sanction.

45. Diyya. Originating in pre-Islamic common law, diyya shares the traits of compensatory payments, but there are important distinctions. 13/ It also has a deterrent and punitive component. It is a possible alternative to a retaliatory sanction for five felonies: premeditated murder, quasi-intentional murder, unintentional manslaughter, intentional physical injury or maiming, and unintentional physical injury or maiming. The diyya is paid to the victim or to his or her family as compensation for bloodshed. Furthermore, diyya is based on collective responsibility, and the family members of the offender may also have to pay. In some cases, it may be paid by the State. There are rules regulating the amount to be paid, depending on the offence and the religious affiliation and sex of the victim. There are no definite rules for the division of the responsibility for payment of diyya among family members of the offender, but generally the amount depends on kinship and financial status.

4. Withdrawal of rights

46. Suspension of driving or other licences. In some systems suspension of a licence is used as a criminal law sanction; in most, however, it is an ancillary sanction or administrative measure.

47. Deprivation of certain rights and removal of professional status. Examples of this form of sanction include the right to perform certain functions or hold certain positions or public offices; to vote, and to act as an expert or witness in court. In most systems, however, deprivation of such rights is an ancillary sanction. Furthermore, some forms of withdrawal of rights (such as dismissal from office) are reserved for certain special groups, such as civil servants.

5. Combination of sanctions

48. Several systems combine custodial with non-custodial sanctions; a combination of different non-custodial sanctions may be used. If the offence is rather serious or if the offender has a serious criminal record, it may be deemed inappropriate to impose a single non-custodial sanction. A combination of sanctions may give the sentence more weight. In addition, a combination of

non-custodial sanctions may be more successful in tailoring the sentence to the characteristics of the offender while meeting the expectations of the court and the community.*

IV. PROBLEMS IN EXPANDING THE USE OF NON-CUSTODIAL SANCTIONS

49. There seems to be a strong interest throughout the world in replacing imprisonment by non-custodial sanctions as demonstrated by various United Nations resolutions. Many of the national replies submitted to the United Nations Secretariat make it clear, however, that appropriate non-custodial sanctions are either simply not available or are used far less than they might be and, if they are used, they tend to replace other non-custodial sanctions rather than imprisonment. The documentation submitted to the Research Workshop suggests some reasons for this: even if the necessary statutory changes are made, the courts may either be unwilling or unable to impose non-custodial sanctions owing to factors related to sentencing, to a lack of suitable resources, or to attitudes.

50. Other problems do not directly explain the slowness with which non-custodial sanctions are put into effect, but should nonetheless be taken into account in the planning and implementation of the sanctions, since they affect the entire criminal justice system. For example, in addition to their "net-widening" effect (see paragraph 19) and their supposed leniency, it has also been argued that, from the point of view of the offender, non-custodial sanctions may raise problems of due process and legal safeguards, in particular in the case of an alleged violation of the conditions of the sanction.

A. Considerations of penal policy

51. The likelihood of non-custodial sanctions being used depends first of all on the degree to which the penal policy is favourable to them and to the functions assigned to them. Punitive penal policy would tend to favour the wide use of imprisonment for a broad range of offences. Policy orientation is also indicated by the legislator's attitudes to a breach of conditions of the non-custodial sanctions, as well as by the legal prerequisites under which a court can impose them. Thus, direct conversion of a non-custodial sanction into imprisonment in the case of a breach of conditions indicates a greater degree of punitiveness than does the search for other, more suitable non-custodial sanctions. Similarly, the requirement for justification of a non-custodial sanction, as opposed to the requirement for justification of a prison sentence, indicates a greater degree of punitiveness.

B. Statutory provisions

52. There are jurisdictions in which the courts have wide discretion to develop new non-custodial sanctions. In most jurisdictions, the courts can only impose sanctions that are expressly defined in statutory law, that is to say, the law must first provide for a range of appropriate non-custodial sanctions before they can be imposed by the courts. Some reports prepared for the Research Workshop note that in some countries there is a lack of clear

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*For an account of developments along these lines in Australia and New Zealand, see Dennis Challinger (Australian Institute of Criminology), "Alternatives to imprisonment in Australia and New Zealand" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

provisions in law regarding both the conditions for imposition of non-custodial sanctions and the methods of implementing them. 14/ In some countries, the range of non-custodial sanctions is quite restricted, and limited to a number of traditional sanctions, such as fines, suspension of imprisonment and probation. 15/

C. Legal safeguards

53. Non-custodial sanctions have been and are being developed primarily with consideration to the position of the offender, for example to improve the likelihood of social reintegration. The attitude may therefore be taken that any non-custodial sanction is preferable to imprisonment, and legal safeguards are not to be seen as an issue. Nonetheless, non-custodial sanctions are still punitive. To adjudicate and implement them properly requires objective discretion. Thus there may well be cases in which the human, civil and political rights of the offender are restricted to a greater extent than the sanction itself would imply. Among the more important safeguards against such a situation are that the application of the sanction should be based on law and established criteria, that the discretionary powers should be exercised by a competent authority, and that the sanction should be subject to review at the request of the offender. The offender should be properly informed of the conditions and possible consequences of non-compliance with them. In an alleged breach of conditions, the offender should have the right to be heard before a decision is taken on the consequence of such a breach. Work on guidelines and standards in the area of non-custodial sanctions is under way in several countries, as well as at the international level. A set of Standard Minimum Rules for Non-Custodial Measures, as recommended by the Committee on Crime Prevention and Control at its eleventh session, is before the Eighth United Nations Congress for consideration and adoption. 16/

D. Sentencing and the establishment of penal value

54. Determination of the penal value of a non-custodial sanction presents a further problem. The penal value of existing sanctions is generally well established. Thus, for example, a fine is generally deemed to be a lesser penalty than a suspended sentence, which in turn is deemed to have less value than imprisonment. The measure of each individual sanction is also based on established practice: a fine of "x" amount for theft under certain circumstances, for example, and imprisonment for "y" months for robbery under certain circumstances. When a new custodial sanction is introduced, it may be difficult for the legislator and the court to assign it its appropriate place in the scale of punishment, and to decide, for example, whether 40 hours of community service is the equivalent of one month of imprisonment, and whether it is more or less severe than a suspended sentence of a certain length.*

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*In some jurisdictions, the criteria for assessing the appropriate place of non-custodial sanction are laid down by law. For example, in Hungary the provisions on community service introduced in 1987 state that one day of community service corresponds to one day in prison (see Karoly Bard, Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations), "Work in liberty under surveillance in Hungary" (United Nations Interregional Crime and Justice Research Institute), Research Workshop document). A study in the Netherlands found that judges and prosecutors considered 150 hours of community service to correspond to about three months of imprisonment, instead of six months as originally envisaged in the planning of the experiment (see Peter J. P. Tak, Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations), "The community service sentence in the Netherlands" (United Nations Interregional Crime and Justice Research Institute, Research Workshop document).

55. In sentencing, therefore, the court must make a choice among a number of sanctions, using multiple criteria that relate the seriousness of the offence to what are deemed to be the relevant characteristics of the offender and the penal value of the non-custodial sanctions available, either singly or in combination. Furthermore, courts frequently work under pressure of time and tend to favour sanctions that do not require time for the collection, presentation and assessment of social inquiries about the offender and his or her situation. Judges tend to find juridical information easier to assess than data drawn from the social sciences.

E. Resources

56. Another problem relates to the availability of resources to implement the sanction. Just as imprisonment calls for prison facilities, personnel and a prison programme, probation generally requires a suitable infrastructure for supervision, and community service requires not only a suitable organization but also designated places of work. In addition, the general economic and political circumstances in a country may have a role to play in determining the extent to which non-custodial sanctions are used. The mere provision of the necessary resources is not enough. They must be of sufficient quantity and quality to ensure that the sanctions are successful in achieving their purpose, no matter how defined. The courts tend to be cautious in imposing new non-custodial sanctions. If a court lacks confidence in the operational efficiency of the services responsible for the implementation of non-custodial sanctions, it will probably be less inclined to make use of them.

F. Attitudes

57. In order for non-custodial sanctions to be imposed, implemented and become effective, they must be regarded as legitimate. The attitude of various parties (including the public, the police, the courts, professional groups and the victim) towards non-custodial sanctions are therefore important. Non-custodial sanctions will not be imposed if the court regards them as ineffective. They will not be implemented properly if those responsible for their implementation (such as the supervisors) regard them as inappropriate; if this is the case, then the courts will adjust their sentencing policy accordingly. Public opinion will be instrumental both when new sanctions are being considered by the legislature and when they are being incorporated into the general sentencing policy. Finally, in individual cases, the position of the victim (and, indeed, of the offender) may be of significance in selecting the sanction.

58. Of all these groups, it is especially the courts and the practitioners who occupy a key position, as they decide on the imposition of the sanction and act on its implementation. On the basis of research on the subject, there is reason to think that precedents, general guidelines and sentencing conferences are not fully adequate measures for introducing new non-custodial sanctions. It is important to involve judges (as well as other professional groups) at the drafting stage of new legislation. Demonstrating the appropriateness of non-custodial sanctions to the courts and practitioners is an on-going process, which by no means ends with the adoption of legislation and an initial training phase. Many experiments with non-custodial sanctions have succeeded because they were run by highly motivated individuals. Once the programme is in place, there is the danger of falling into routines or meeting with unexpected difficulties in implementing the sanctions in the light of local circumstances or with persons who are not so committed to its original

purpose. Broad policy premises must be translated into practice taking into account different environments and local contexts.

G. Side-effects and dysfunctions

59. One area of concern relates to the possible dysfunctions of the wider use of non-custodial sanctions, in particular the so-called net-widening effect. Statistical evidence from various countries suggests that non-custodial sanctions are either used far less than they might be or, when applied, are used as substitutes for other non-custodial sanctions and not for imprisonment. In addition, when suspended sentences are pronounced, the sentence imposed may be longer than if an unconditional sentence to imprisonment were used. If the original sentence is activated, the offender can therefore go to prison for longer than would otherwise have been the case. In the long run, the extended use of non-custodial sanctions might lead to a dichotomization of sentencing: offenders receiving less restrictive non-custodial sanctions on the one hand and those sentenced to longer prison terms on the other.

V. PROMOTION OF NON-CUSTODIAL SANCTIONS

60. A variety of ways of promoting greater use of non-custodial sanctions have been reported, including those intended to avoid pre-trial detention.

61. Statutory measures. The fundamental statutory measure is legislation, making a range of non-custodial sanctions available to the criminal justice system and clearly outlining the procedures and conditions for their imposition and implementation.

62. Another measure includes a statutory requirement of justification for the use of imprisonment.* This would compel the court to justify its decision that none of the available non-custodial sanctions is appropriate.

63. Limiting conditions on the use of non-custodial sanctions could be eliminated or relaxed. For example, the maximum length of imprisonment that can be replaced by a non-custodial sanction could be raised, and existing prohibitions against the use of non-custodial sanctions in case of recidivism could be replaced by statutory provisions allowing for court discretion. Imprisonment for certain offences could be abolished. Changes in society are often reflected in the attitude towards certain types of behaviour. A review of criminal law may indicate that existing penal provisions on certain offences were passed at a time when those offences were deemed particularly reprehensible; in the light of present attitudes, a non-custodial sanction may be deemed more appropriate. At the same time, the public attitude towards the use of imprisonment may have changed; in many countries, its "penal value" has increased. Where imprisonment at one time was imposed in decades, it may now be imposed in years; where it was once imposed in years, it may now be imposed in months or even weeks.

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*For example, section 11 of the Penalties and Sentences Act 1985 (Vic), promulgated in Victoria, Australia, states that: "Where a Magistrates' Court passes a sentence of imprisonment on a person, the Magistrates' Court: (a) must state in writing the reason for its decision; and (b) must cause these reasons to be entered in the records of the court."

64. In countries where there is a call for harsher punishment, it may be sufficient, instead of expanding the use of imprisonment, to allow for a combination of non-custodial sanctions. This end may also be achieved by making the existing non-custodial sanctions more attractive as sentencing options, for example by allowing for the possibility of inserting additional requirements or conditions in, for example, probation orders. In several jurisdictions, the elimination of imprisonment below a certain length has been proposed. The rationale is that the courts would be compelled to seek alternatives to short-term custody. Other restrictions on the application of imprisonment could also be embodied in legislation.

65. Measures related to the courts. Emphasis is often placed on the role of court precedents in guiding the practice of the lower courts, this method being preferred over legislated guidelines in order to maintain a proper division of power. Precedents are still, however, merely decisions on individual cases, and the extent to which general conclusions can be drawn from them depends not only on the legal system but also on the case. In some countries, the supreme court has the power to issue sentencing guidelines that go beyond the scope of the cases at hand. Such guidelines provide the judge with information on the usual sanction given for a specific type of offence.

66. Also, judicial conferences or professional associations can help to clarify sentencing objectives and guidelines. For example, they could stipulate the criteria and principles that permit comparison of various sanctions and their standardization. Conferences and associations need not be limited to judicial personnel; they could include corrections staff and other persons responsible for the administration of sentences, thus providing a special form of training. Other forms include special courses and seminars at which new legislation is introduced, or at which the court personnel is acquainted with research on the effectiveness of the various options. Since non-custodial sanctions depend on the professional legal culture of judges (as well as prosecutors and other practitioners involved in the imposition and implementation of the sanctions), their promotion to the "norm" should start with the process of professional education. For example, the curriculum of law schools should reflect these concerns.

67. Other strategies focus on drawing the attention of the courts to the official policy of favouring non-custodial sanctions (for example through the adoption of an official statement of the purposes and principles of sentencing), or on increasing their credibility. The latter can be achieved by providing the courts with systematic information on the effectiveness of various sanctions and through closer control over the enforcement of the sanction. Where this would not be deemed a violation of the principle of the separation of the power, the executive branch could consider providing the court with sentencing guidelines, based on current court practice. In turn, the judiciary could overview the implementation of the non-custodial sanctions, particularly in those countries where supervising judges have this function.

68. Measures related to prosecution. The selection of the sanction is often determined by the motion of the prosecutor, or by the way in which the case is presented. For this reason, guidelines should also be developed for prosecutors on the selection of the appropriate sanction for presentation to court, and appropriate prosecutorial training should be arranged. Such guidelines should include in particular criteria for non-prosecution.

69. Measures related to implementation. One very important measure to increase the credibility of non-custodial sanctions and thus promote their use

is for the State and local community to provide the resources needed for the development, enforcement and monitoring of such sanctions. Attention should also be paid to the training of the practitioners responsible for their implementation and for co-ordination between criminal justice agencies and other agencies involved in their application in the community.

70. Because the success of many non-custodial sanctions depends to a large extent on the interaction between the community and the offender, special measures should be adopted to make the community sensitive to their benefits and potential for crime control. Examples include the provision of relevant information on the situation of offenders, greater use of the existing reconciliation or dispute settlement mechanisms or institutions in the community, and increased reliance on volunteer and citizens' associations in the implementation of non-custodial sanctions (which may also decrease the costs of such implementation).

VI. CONCLUSIONS

71. The problems associated with the use of imprisonment, both for the offender and for society, have led to a greater interest in non-custodial sanctions. These are expected to combine many functions. They are generally expected to help reduce the prison population and the over-all costs of the system. They are believed to be more conducive to social integration, thus reducing recidivism, and increasing the crime control effects of the criminal justice system. They are also supposed to act as a deterrent and just punishment for a certain range of offences and for certain types of offenders, thus providing certain advantages to society if compared with imprisonment.

72. Some of these purposes conflict with one another, and they may not be adequate to all types of non-custodial sanctions. Some may be directed more towards treatment, some may have a bias towards integration, while others simply call for payment by the offender - a fiscal contribution to the State, compensation to the victim or compensation to the community as a whole.

73. Experience with different sanctions in different countries cannot be taken as a clear-cut demonstration that non-custodial sanctions do everything they are supposed to. For example, even when non-custodial sanctions are substituted for imprisonment, they generally replace quite short sentences, thus having little effect on the size of the prison population. The same negligible results are achieved if they are used for a small number of offenders. At the same time, other circumstances (such as an increase in crime rates) could lead to more, and even more severe, sentences of imprisonment, thus giving the impression that the reform has, on the contrary, led to greater use of imprisonment. There is no clear evidence that the greater use of non-custodial sanctions does or does not succeed in lowering the overall costs or in promoting rehabilitation. Yet, the evidence is at least as ambiguous for the argument that the extent of non-custodial sanctions is linked to the structure and level of crime in society - for example, that non-custodial sanctions are used to a proportionately lesser extent when a country faces a "serious crime problem", or that their "excessive" use would encourage more crime. No connection has been shown between more lenient sanctions and a greater amount of crime or, correspondingly, between more severe sanctions and a reduction in crime.

74. From the material made available for the Research Workshop, the following general conclusions can be drawn:

(a) There is an interest throughout the world in increasing the use of non-custodial sanctions. This can be seen in both penal philosophy and policy and, increasingly, at the statutory level (as in Australia and Europe). This trend, however, is not unidirectional. In some countries, there has been an increase in the use both of non-custodial sanctions and of imprisonment, or in punitive components in non-custodial sanctions, presumably as a reaction to an increase in crime;

(b) Despite the increased theoretical interest in non-custodial sanctions, a gap remains between policy and practice. This is evident on several levels. On the statutory level, many Governments (particularly of Arab and Latin American countries) report that they do not have an appropriate range of such sanctions, or that the legislation does not provide clear guidance on their purposes, imposition and implementation. As regards sentencing practice, the gap is reflected in the continuing predominance of imprisonment as the "norm" or as the criterion for sentencing. Non-custodial sanctions are either used far less than the law would allow, or as alternatives for other non-custodial sanctions. Moreover, the implementation of some non-custodial sanctions is hindered because of the absence, for example, of the necessary personnel, support structures and funds;

(c) In many jurisdictions (for example in Australia, Canada, Europe and the United States), there is a clear trend towards the diversification of non-custodial sanctions. This can be seen, for example, in the adoption of a greater number of different non-custodial sanctions, in the adding of certain conditions to existing non-custodial sanctions, and in increased opportunities for combining different types of sanction. The latter two may be seen as a partial response to the demand for developing more appropriate and, in some cases, more punitive non-custodial sanctions;

(d) In addition to these general trends, some patterns can be noted, the strength of which vary from one jurisdiction to the next:

(i) The diversification of non-custodial sanctions, paralleled in some countries by an extension of non-custodial sanctions to a greater range of offences and offenders (for example in Europe);

(ii) Greater use of the traditional non-custodial sanctions, such as fines (in some countries of Europe and Latin America, in the form of day-fines), probation (in many Asian and in some African countries, and in the United States) and suspended or conditional sentences (in some countries of the Arab region and in Latin America);

(iii) Development of non-custodial sanctions containing a number of conditions, in particular one or a combination of the following components: work (as in community service), compensation or restitution, and treatment (in Australia, Canada, Europe and the United States);

(iv) Renewed interest in traditional sanctions, and those relying on traditional infrastructures (in Africa and parts of Asia and the Pacific region).

Totally new sanctions rarely appear. Among the few examples are community service and home probation. Perhaps the most effective road towards greater use of non-custodial sanctions is to give life to "old" measures. Indeed, most recent legislative action has tended to expand the scope of sanctions already available or to place them on a statutory footing;

(e) In many countries (such as Australia and Canada, and several countries in Europe), non-custodial sanctions are being promoted through measures that provide guides for sentencing, including standardization of sentencing. This has been done, for example, through the introduction of statutory guidelines or guidelines adopted by judicial conferences and professional associations;

(f) There is increased interest in national and international standard-setting, with an emphasis on legal safeguards.*

The need for further research

75. In all regions there is a clear lack of statistical data and research on the effectiveness of non-custodial sanctions, and problems met in promoting them. 17/ Research is needed on the normative structure that determines the availability and application of non-custodial sanctions. Non-custodial sanctions cannot be imposed where the law does not allow it. Furthermore, certain legal provisions may unintentionally deter their use. For example, the procedural requirements for the imposition of certain non-custodial sanctions may bar their imposition in simplified proceedings. Also, the greater use of non-custodial sanctions may widen the statutory discretionary powers of certain authorities. This may conflict with other policy goals, such as ensuring due process. In addition, the introduction of non-custodial sanctions through legislative action requires analysis of the proper place of the sanction in the normative scale of punishments.

76. Research is needed on the factors considered by the sentencing judge or tribunal. Unexpected factors may have a decisive influence. Non-custodial sanctions may also be discriminatory, as has been argued to be the case with prison sentences. For example, fines may be imposed only on those who are able to pay them; community service may be imposed only on offenders with certain characteristics not necessarily envisaged by the legislator; or the milder forms of non-custodial sanctions may be imposed on offenders who have a high standing in the community.

77. One area of research related to sentencing concentrates on attitudes. Those of the sentencing judge affect his or her decisions on the available options. Just as important are the attitudes of other persons involved in the implementation of non-custodial sanctions. In particular, the degree to which a non-custodial sanction is "accepted" by professionals as well as by the community influences the probability that this sanction will actually be applied. Research on changes in attitudes (showing their causes and extent) might be of assistance in planning the introduction or expansion of non-custodial sanctions.

78. A key factor in the "success" of any non-custodial sanction is the extent to which the policy-makers, courts, other practitioners and agencies and the community are informed of its costs and benefits. Their effectiveness (and, indeed, the effectiveness of sanctions in general) has long been a popular

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*Examples include work done in Australia, Canada, the United States and, at the regional level, the Council of Europe.

subject of research. Regrettably, it has yielded relatively meagre results.* The problems encountered in such research, and in evaluative research in general, are great. Nevertheless further research is needed in order to promote non-custodial sanctions.

79. The initial observation that different countries share much the same problems and concerns suggests that one promising approach is through comparative research. This also provides information on the applicability and potential of non-custodial sanctions under different socio-economic, cultural, political, legal and organizational conditions. By making it possible to assess their use, it plays an important role in the much needed sharing of experiences and exchange of information throughout the world in the crucial area of penology and crime control.

Notes

1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985 (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. E.

2/ Elias Carranza and others (United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders), "Release on personal recognizance in Costa Rica" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

3/ Reda Mezghani (Arab Security Studies and Training Centre), "Alternatives to imprisonment in Arab countries" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

4/ Annesley K. Schmidt, "Electronic Monitoring in the U.S.A."; Dennis Challinger (Australian Institute of Criminology), "An Australian case study: the Northern Territory Home Detention Scheme" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

5/ Elias Carranza and others, "Release ...".

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*The following quotation is taken from Michael Tonry and Richard Wills, "Intermediate sanctions" (November 1988), an unpublished draft report, cited in Schmidt, "Overview ...": "First, the purpose of particular programmes are seldom specified in any authoritative way, and different people often have different purposes in mind ... Second, it is difficult to disentangle cause and effect in assessments of most legal changes ... Third, efforts to isolate the effects of specific policy changes ... are complicated by the occurrence of other changes that may affect the implementation and consequences of the policy changes under examination ... Fourth, although very few intermediate sanction programmes have been evaluated carefully, many administrators believe their programmes to be successful ... (so that) in a field, however, in which few rigorous evaluations have been conducted, the persuasive force of conventional but untested wisdom is great. (And) fifth, although there are important exceptions, much of the existing evaluation research is badly flawed ... and cannot serve as a foundation for drawing meaningful conclusions ...." See also, Alvazzi, Fornara and Siemaszko, op. cit.

6/ Hiroyasu Sugihara and others (United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders), "An overview to alternatives to imprisonment in Asia and the Pacific region" (United Nations Interregional Crime and Justice Research Institute, Research Workshop document).

7/ Peter J. P. Tak (Helsinki Institute for Crime Prevention and Control affiliated with the United Nations), "The community service sentence in the Netherlands" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

8/ See Karoly Bard (Helsinki Institute for Crime Prevention and Control affiliated with the United Nations), "Work in liberty under surveillance in Hungary" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

9/ Annesley K. Schmidt, "Electronic ...".

10/ Challinger, *op. cit*.

11/ Annesley K. Schmidt, "Electronic ...".

12/ Adedokun A. Adeyemi (United Nations Interregional Crime and Justice Institute), "Personal reparations in Africa: Nigeria and Gambia" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

13/ Mohamed F. Al-Sagheer (Arab Security Studies and Training Centre), "*Diyya* legislations in Islamic Shari'a and its applications in the Kingdom of Saudi Arabia" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

14/ Elias Carranza and others, "Alternatives ...".

15/ Mezghani, *op. cit*.

16/ *Official Records of the Economic and Social Council, 1990, Supplement No. 10* (E/1990/31), chap. I, sect. C, decision 11/108.

17/ Anna Alvazzi del Frate, Maria Luisa Fornara and Andrzej Siemaszko (United Nations Interregional Crime and Justice Institute), "Review of literature on alternatives to imprisonment, 1980-1989" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

UNITED NATIONS

EIGHTH
UNITED NATIONS CONGRESS
ON THE PREVENTION OF CRIME
AND THE TREATMENT OF OFFENDERS

Havana, Cuba, 27 August to 7 September 1990

Distr.
GENERAL

A/CONF.144/14
4 July 1990

ORIGINAL: ENGLISH

Item 4 of the provisional agenda*

CRIMINAL JUSTICE POLICIES IN RELATION TO PROBLEMS OF IMPRISONMENT, OTHER PENAL SANCTIONS AND ALTERNATIVE MEASURES (TOPIC II)

Computerization of the administration of criminal justice

Report of the Secretariat

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*A/CONF.144/1.

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INTRODUCTION

1. In the early 1970s, when United Nations action in the area of computerization of public administration began, the first reports of the Secretary-General on the matter emphasized the complexity of the question of computerization, which was largely restricted to national computing centres. 1/ As cheaper, smaller but more powerful computers emerged, the computerization of public administration became more widespread. An increasing variety of equipment and programs have made it possible to conceptualize, plan and implement computerization in various administrative areas, including the administration of criminal justice.

2. The purpose of the present report is to present the role of computerization in the adminstration of criminal justice as a means of improving its efficiency, taking into account the fair and humane treatment of offenders.

3. A review of the prerequisites for computerization is presented in section II of this report. Modalities of international co-operation in the computerization of the management of criminal justice are provided in section III. Both discussions are based on the deliberations of an *ad hoc* expert group meeting on the application of computers in the administration of criminal justice, held at Ottawa from 27 November to 1 December 1989. The modalities include: (a) development of guidelines for decision makers and users of computer output; (b) strengthening of the world-wide United Nations Criminal Justice Information Network (UNCJIN); and (c) preparation of technical co-operation involving the education and training of criminal justice staff and the development of technical co-operation projects for introducing computers in the management of criminal justice.

I. UNITED NATIONS ACTION IN THE AREA OF COMPUTERIZATION OF THE ADMINISTRATION OF CRIMINAL JUSTICE

A. *Legislative background*

4. The Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva from 1 to 12 September 1975, was the first United Nations meeting of criminal justice experts and practitioners to call attention to new methods of combating crime and treating offenders emerging as a result of scientific and technical progress. 2/ The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Caracas from 24 August to 5 September 1980, recognized the importance of valid information, particularly statistical information, in understanding crime and the operation of justice systems. 3/

5. Growing realization of the importance of information management in criminal justice led the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from 26 August to 6 September 1985, in its resolution 9 on the development of crime and criminal justice information and statistical systems, to invite interested Member States to provide for measures to enhance the transfer of information within criminal justice agencies, and between such agencies and the community; and to urge interested Member States to take steps to protect the rights of citizens concerning the privacy of individually identifiable data contained in criminal justice information systems. In the same resolution, the Seventh Congress requested the Secretary-General to initiate work on the use of information systems in the administration of criminal justice and to report theron to the Committee on Crime Prevention and Control. 4/

6. The Manual for the Development of Criminal Justice Statistics, 5/ published in 1986, provided basic guidelines on the collection and processing of crime-related data, including their computerization. The Manual, together with a publication entitled Modern Management and Information Systems for Public Administration in Developing Countries, 6/ issued by the Department of Technical Co-operation for Development of the Secretariat, laid the groundwork for United Nations efforts to computerize the management of criminal justice systems.

7. The Committee on Crime Prevention and Control, at its ninth session, held at Vienna from 5 to 14 March 1986, examined the report of the Secretary-General on the initial review of the functioning and programme of work of the United nations in the field of crime prevention and criminal justice (E/AC.57/1986/4).

8. Upon the recommendation of the Committee at its ninth session, the Economic and Social Council, in its resolution 1986/11, endorsed the recommendations made by the Secretary-General in paragraph 82 of his report and invited the Secretary-General to make all efforts to establish, in co-operation with the United Nations institutes and other entities concerned, a global crime and criminal justice information network, with the Crime Prevention and Criminal Justice Branch as a focal point, including a mechanism for the centralization of inputs from non-governmental organizations and scientific institutions.

9. In support of the United Nations programme of computerization of criminal justice, the European Seminar on Computerization of Criminal Justice Information Systems: Realities, Methods, Prospects and Effects, organized jointly by the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), and the Ministry of Justice of Poland, was held at Popowo, Poland, from 18 to 22 May 1987. The results of the Seminar were summarized in a special double issue of the Crime Prevention and Criminal Justice Newsletter on the computerization of criminal justice information 7/ and in a publication issued by HEUNI. 8/ Those publications are instrumental in the development of recommendations on the basic issues in the computerization of the administration of criminal justice.

10. Those recommendations were considered by the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic II: "Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures", held at Vienna from 30 May to 3 June 1988. The recommendations were subsequently incorporated by the Meeting into its draft resolution on the management of criminal justice and the development of sentencing policies, in the section on management and computers. The Meeting recommended to the Committee on Crime Prevention and Control the submission of the draft resolution for adoption by the Eighth Congress (A/CONF.144/IPM.4, pp. 6-7).

11. The Committee on Crime Prevention and Control, at its tenth session, held at Vienna from 21 to 31 August 1988, reviewed the report of the Secretary-General on the review of the functioning and programme of work of the United Nations in crime prevention and criminal justice (E/AC.57/1988/13) and a conference room paper on the establishment of a United Nations criminal justice and crime prevention information network (E/AC.57/1988/CRP.8).

12. The Council, in its resolution 1989/68, took note of the efforts made towards the establishment of a global crime prevention and criminal justice

information network* and requested the Secretary-General to secure adequate resources for its full realization, including the recruitment of a specialist to implement it, ensuring access to all potential users and taking advantage of existing information networks. In the same resolution, the Council urged Governments in the process of improving the management of criminal justice to consider the use of suitable information technology, including electronic data processing, and requested the Secretary-General to develop guidelines and training materials on the use of information technology in the management of criminal justice for interested Member States, and to seek additional extra-budgetary resources to expand that work.**

B. The mandate and purpose of the workshop on computerization of the administration of criminal justice

13. In its resolution 1989/69, the Council recommended that work should continue on the development of guidelines for computerization of the administration of criminal justice and that a workshop for the discussion of national experiences should be held within the framework of item 4 of the provisional agenda for the Eighth Congress, entitled "Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures (topic II)", the report of which should be submitted to the committee of the Eighth Congress dealing with that item. The responsibility for the organization of the workshop was assigned to HEUNI. The General Assembly, in its resolution 44/72, urged Member States to contribute to the workshop by preparing research and technical papers and other information enabling a substantive and fruitful exchange of national experiences in computerization of the administration of criminal justice.

14. The *ad hoc* expert group meeting held at Ottawa in 1989, which was sponsored by the Government of Canada as a contribution to the elaboration of item 4 of the provisional agenda for the Eighth Congress, laid the basis for the workshop on computerization of the administration of criminal justice and began the process of developing proposals for a long-term United Nations plan of

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*The phrase, global crime and criminal justice information network, used in General Assembly resolution 44/72 and in Council resolutions 1986/11 and 1989/68, refers to UNCJIN and its envisaged development as part of the entire computerization programme.

**The development of other guidelines involving the protection of privacy was initiated within the framework of the United Nations human rights programme. On the recommendation of the Commission on Human Rights, the Economic and Social Council, in its resolution 1989/78, took note of resolution 1988/29 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and of Commission on Human Rights resolution 1989/43 on guidelines on the use of computerized personal files. In that same resolution, the Council decided to transmit to the General Assembly the final report of the Special Rapporteur of the Sub-Commission, Mr. Louis Joinet, on guidelines for the regulation of computerized personal data files (E/CN.4/Sub.2/1988/22). The final report of the Special Rapporteur was annexed to the report of the Secretary-General on guidelines for the regulation of computerized personal data files (A/44/606), which contained the views expressed thereon by Member States. The General Assembly, in its resolution 44/132, requested the Commission to examine and, if necessary, to modify the revised draft guidelines before transmitting them, through the Economic and Social Council, to the General Assembly at its forty-fifth session for final adoption.

action in that area, which were submitted for consideration by the Committee on Crime Prevention and Control at its eleventh session, held at Vienna from 6 to 16 February 1990.

15. In order to further elaborate the substantive terms of reference for the discussion on that question during the workshop, the Committee, at its eleventh session, reviewed all the observations on computerization made by the interregional and regional preparatory meetings for the Eighth Congress* and by the ad hoc expert group meeting held at Ottawa in 1989.

16. In its draft decision 11/105, the Committee decided to recommend to the Council to transmit to the Eighth Congress a draft resolution entitled "The management of criminal justice and the development of sentencing policies". In section F of that draft resolution, the Eighth Congress would, inter alia, request the Secretary-General: (a) to develop a data base of innovative programmes for the computerization of criminal justice systems that might be applicable to systems in other Member States; (b) to facilitate the exchange of information, experience and personnel between jurisdictions that are in the process of computerizing some aspect of their criminal justice systems and those that are at a more advanced stage of that process; (c) to disseminate information on relevant experiences in that area.

17. In its draft decision 11/103, the Committee decided to recommend to the Economic and Social Council to transmit to the Eighth Congress a draft resolution entitled "Computerization of criminal justice". In that draft resolution, the Eighth Congress would request the Secretary-General to establish, in co-operation with the network of regional and interregional institutes, a technical co-operation programme for the systematization and computerization of criminal justice in order to offer training, assess needs, formulate and execute specific projects, and to report on the results achieved to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

18. In view of a multitude of aspects covered by the various United Nations bodies dealing with the question of computerization in criminal justice, HEUNI accepted the responsibility for organizing a workshop on computerization at the Eighth Congress. Following consultations with the Crime Prevention and Criminal Justice Branch of the United Nations Office at Vienna, Centre for Social Development and Humanitarian Affairs, and action at the Fifth and the Sixth Annual Joint Meetings on Programme Co-ordination in the Field of Crime Prevention and Criminal Justice, held at Riyadh on 18 January 1989 and from 13 to 15 January 1990, respectively, at the invitation of the Arab Security Studies and Training Centre at Riyadh, it was decided that the workshop on computerization would have three components: a one-day workshop for a general exchange of views between national delegations and other participants of the

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*See, in particular, the report of the Asia and Pacific Regional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Bangkok from 10 to 14 April 1989 (A/CONF.144/RPM.1, para. 32); the report of the European Regional Preparatory Meeting for the Eighth Congress, held at Helsinki from 24 to 28 April 1989 (A/CONF.144/RPM.2, paras. 23-24); the report of the Latin American and Caribbean Regional Preparatory Meeting for the Eighth Congress, held at San José from 8 to 12 May 1989 (A/CONF.144/RPM.3, para. 39); and the report of the African Regional Preparatory Meeting for the Eighth Congress, held at Addis Ababa from 5 to 9 June 1989 (A/CONF.144/RPM.5, para. 54).

Eighth Congress, a three-day seminar to discuss computerization projects in the light of recent experiences, and a demonstration on software applications in the management of criminal justice.

19. The one-day workshop will provide an opportunity for participants to consider some of the general issues in the introduction of computer technology in the administration of criminal justice and the development of proposals for a long-term United Nations plan of action to assist Member States in that field. The three-day seminar will provide an opportunity for an in-depth review of some of the problems encountered in introducing computer technology into the administration of criminal justice. The software demonstration, which may run for the duration of the Eighth Congress, will allow interested parties to demonstrate practical computer applications in the administration of criminal justice.

20. The English text of a background document for the workshop, a manual on the effective use of computers in criminal justice, will be available for comments by participants. An executive summary of the manual is being prepared in all languages by the Statistical Office of the Secretariat. The manual, which will be published after the Eighth Congress, was discussed at length at the *ad hoc* expert group meeting held at Ottawa in 1989 and further refined by a meeting of experts organized by the Home Office of the United Kingdom of Great Britain and Northern Ireland, which was held in London from 2 to 4 July 1990.

C. Results of the Third United Nations Survey of Crime Trends, Operations of Criminal Justice Systems and Crime Prevention Strategies related to computerization of the administration of criminal justice

21. According to the replies to the supplement to the Third United Nations Survey of Crime Trends, Operations of Criminal Justice Systems and Crime Prevention Strategies (1980-1986), which were submitted by only 28 Member States (4 from Africa, 8 from Asia and the Pacific, 11 from Europe and 5 from Latin America), the most needed forms of United Nations assistance to criminal justice administrators should involve, *inter alia*:

(a) Promotion of study tours to countries more advanced in the field of criminal justice and the exchange of experiences between countries;

(b) Establishment of an international crime prevention and criminal justice information system;

(c) Provision of technical and staff assistance and staff training in setting up an information infrastructure in this field;

(d) Facilitation of contact between Member States to obtain information on systems for statistics on offences, including data on victimization;

(e) Provision of information concerning international and regional conferences; workshops on prison administration; research; legislative developments etc.;

(f) Establishment of standards for the use of compatible hardware and software.

22. Since 1988, efforts have focused on gathering information on national experiences. Those efforts have resulted in the publication of the *Directory of Computer Applications in Criminal Justice Information*, which is being

submitted by HEUNI to the workshop as a background document reflecting the developments in European countries.

D. Rationale for and aims of applying computer technology in the management of criminal justice

23. The interest in the computerization of the administration of criminal justice arises from the wide range of potential benefits it offers, some of which are described below.

1. Increase in efficiency of criminal justice operations

24. Computerization can increase overall efficiency in criminal justice operations by reducing delays, improving the use of resources, and limiting opportunities for human error. Computerizing the records of each criminal case, for example, records of deadlines for decisions to be taken or implemented, can help criminal justice officials to discharge their duties in a more timely fashion. It can also improve public perception of the judicial process and the quality of justice.

2. Assistance in decision-making

25. Computerization can assist, but not replace, the decision-making process by providing access to more timely and accurate information on individual cases, for example, in scheduling cases and assigning them to judges and in preparing decisions on bail and on sentencing. Computerization can also provide judges, lawyers and other criminal justice practitioners with rapid access to reference material, such as statutes and case-law.

26. Recent applications of expert systems in law enforcement, software packages that use artificial intelligence techniques to draw conclusions from facts presented by the user, offer additional advantages that facilitate the decision-making process in individual cases. Although expert systems do not and should not provide definitive solutions, they may be helpful in command and control functions in law enforcement (e.g. dealing with simultaneous requests for service), crime-solving (the creation of suspect profiles), computer-aided instruction and programme planning and design. The use of expert systems may also improve legal training, for example, by providing police with advice on the type of information required by prosecutors to reduce the rate of case attrition. 9/

3. Improvement in inter-agency co-ordination

27. Computerization can promote inter-agency co-ordination at all levels and reduce the incidence of errors by making possible the rapid and accurate transfer between agencies of details on selected offenders and cases. Offender-based transactional statistics can thus be utilized system-wide in the effective transmission of data on particular offenders.

4. Improvement in the availability of analytical information

28. Computerization can provide policy makers and managers with the possibility of monitoring the current operations of individual units, agencies and the criminal justice system as a whole by analysing up-to-date statistics. Such statistical analysis is also useful for obtaining aggregate data to serve as a basis for policy evaluation. The law enforcement services (police, border control and customs control) are usually among the first to benefit from such an innovation and are likely to generate input for other criminal

justice agencies. At the prosecution and court levels, monitoring statistics and key indicators can be useful in making operational and strategic decisions, such as decisions on the allocation of cases to practitioners and on projecting work-loads on the basis of processed cases.

5. Improvement in efficiency of work of administrative units

29. At the operational level, computerization can be useful in the staff-intensive and largely routine administrative and clerical tasks of individual agencies, such as the preparation of various documents, the management of fines and accounting, thereby developing the potential for greatly increased efficiency.

6. Standardization and exchange of information

30. If common standards are adopted for the information stored in computer systems, computerization can make it possible for statistical and monitoring information from each agency to be examined in relation to that of other agencies.

31. Because only standardized information can be meaningfully shared, the adoption of common definitions would facilitate the development, exchange and comparison of key performance indicators of criminal justice systems. Data in a machine-readable format may be easily transferred and analysed.

32. Progress at the international level is, however, directly dependent on national efforts to computerize the administration of criminal justice. Member States of the Council of Europe, for instance, which are relatively advanced in that area, have a forum in which to share experiences and to develop common standards and guidelines, 10/ all of which may be of considerable interest to the United Nations system.

II. PREREQUISITES FOR COMPUTERIZATION

A. Identification of factors important for successful computerization

33. Whether or not a computerization project succeeds depends on factors related to the development of the criminal justice system itself and on the level of economic or social development of the country in question. Introducing computerization into the management of criminal justice may expose weaknesses in its structure and organization. 11/

34. Factors that are important for successful computerization include commitment at the executive level to computerization projects; stability in policies, practices and procedures governing the delivery of justice services and the provision of administrative support to them; a framework of co-operation involving the administration of justice on the one hand and related social and non-justice systems on the other; and consistency in terminology and definitions. Finally, there must be a comprehensive national policy for developing and introducing computer-assisted systems and procedures.

35. A direct correlation may exist between the above-mentioned factors and the effectiveness of computerization in the management of criminal justice. For example, executive-level commitment to a computerization project is necessary in order to ensure that the project will continue to receive funding over

a number of years despite changing and competing priorities and circumstances. 12/ The organizational units involved should be clearly identified and their interrelationship and division of labour should be understood and accepted.

36. At the interregional level, and within the United Nations system, computerization may involve, in addition to standardizing definitions and key performance indicators of criminal justice operations, designing model software packages facilitating the intra- and inter-agency transfer of crime-related data and providing technical assistance to developing countries, based on the experience of developed countries.

B. Role of planning in the computerization process

37. Efficient information systems require good planning at the national level. Local computerization plans should be properly designed and implemented to ensure that they meet their objectives in terms of cost, quality, timeliness and possible interfaces with other public administration information systems. Without planning, there is no firm basis for funding; there is no bench-mark for measuring operating efficiency; purchases may be made without the benefit of competition; and the needs of users may not be satisfied on time, if at all. 13/

38. In preparing such plans, consideration should be given to the merits of proceeding with a system of co-ordinated justice in contrast to a series of parallel, justice-sector-specific (police, courts, corrections etc.) systems. The integration of criminal justice operations requires additional efforts on the part of decision makers who, in planning a system-wide flow of information, need to be more receptive to the information needs of other agencies, which depend on their operational and policy-oriented tasks.

39. The computerization process should be based on a phased and incremental approach, not only within the overall computerization plan, but also within the development project of each specific system. Each phase of work should be tailored to the resources and time available in order to avoid overload. Each phase should also take into account the available or planned telecommunications facilities. In addition, the costs and benefits of building a custom-designed system, in contrast to transferring technology from elsewhere or tailoring packaged systems, should be examined.

C. Management issues

40. Planners and potential users may be constrained in their approach to computerization by the manner in which tasks were handled in the past, leading to computerization of inefficient and inappropriate processes rather than the development of systems that tackle overall agency objectives. Plans may call for systems that are too complex for the technical staff to develop or for agency staff to operate, leading to systems that are never completed or that fall into disuse. It is therefore important to plan computerization in stages, thus gradually gaining the experience needed to attain the goals of the project.

41. Delegating too much responsibility to technical specialists or private sector consultants may result in loss of control or in too much emphasis being placed on the technical aspects of the system rather than on its purpose or objectives. In addition, inadequate project management and control may lead to missed deadlines, cost overruns or failure to achieve the expected objectives on time. These, in turn, may result in loss of the users' commitment to the system.

42. Inappropriate hardware and/or software may result in systems with insufficient capacity, poor performance or limited scope for future expansion or in proprietary systems that force users to use certain manufacturers' equipment, limiting future development. Inadequate funding of the project, usually the result of setting aside insufficient resources for support and training, may lead to corners being cut and to essential components of the project being omitted. Insufficient training may lead to inefficient use of the system.

43. Adequate consideration should be given to the effect of computerization on staff and on the organization. Failure to do so could result in an inefficient system, anxiety among staff or staff disputes, which, in turn, may lead to rejection of the system.

44. Successful computerization projects invariably have lasting implications for the internal structure and the nature of authority in a criminal justice agency. They may alter:

(a) The form of communication, removing the need for some communication (for example, some information may have been transferred by word of mouth before computerization);

(b) The nature of some of the tasks undertaken by staff, removing the need for some of the tasks;

(c) The lines of communication between individuals;

(d) The extent to which certain individuals' experience or knowledge is required for some tasks;

(e) The relationship between individuals and the overall task of the organization (i.e. how tasks are grouped together);

(f) The number or qualifications of the staff required to perform certain types of work.

45. In sum, computerization may lead to changes in traditional managerial tasks and responsibilities that will require new skills and may make some administrative jobs obsolete. These changes may lead to new managerial issues that will have to be recognized and dealt with.

D. Assessment of computerization needs

46. Computerization is an expensive and lengthy process that may fail to achieve the desired benefits. A basic prerequisite for the successful introduction of computer technology is, therefore, an assessment of computerization needs, in this case, the needs articulated by interested Member States requiring assistance.

47. It may be difficult to assess such needs in some countries because there may be no one available who is truly informed about, and experienced in, the computerization of information systems in the management of criminal justice.

48. It is quite possible that computerization may not be necessary; for example, a manual card index system might meet the users' needs quite well in some cases. Often, instead of a phased approach, projects call for too much computerization too soon. Consequently the projects are too large to be manageable, expectations cannot be met, and the degree of complexity in the

system design exceeds the capabilities of technical and user staff. Planners may underestimate the complexity and specialized nature of criminal justice work and assume that general commercial software packages can be applied to such work, a mistake often made by private sector consultants. 14/ One of the objectives of the workshop on computerization of the administration of criminal justice is to exchange experiences with such errors in planning and implementing an automated system.

49. Failure to examine the users' needs may lead to attempts to computerize without a clear overall strategy, either at the agency level in the criminal justice system as a whole. The assessment of needs may have been replaced by a simple projection by the computerization experts of their own views of the users' needs. This may result in a loss of opportunities for integrating information sharing; or in failure to identify the relationship between operational computing systems, which assist in the day-to-day operation of criminal justice, and statistical systems, thus leading to unnecessary duplication of information systems and effort.

50. A proper assessment of users' needs may need to take into account local, national and international surveys on the subject.

III. INTERNATIONAL CO-OPERATION FOR A COMPREHENSIVE COMPUTERIZATION PROGRAMME IN CRIMINAL JUSTICE AND CRIME PREVENTION

A. Benefits of international exchanges of experience

51. No country, whether developed or developing, can take lightly the risk of installing computer-based information systems in a manner that is less than optimal. For developing countries, the dangers of inappropriate and poorly planned computerization are great. "Many United Nations advisory missions to developing countries have found frequent misutilization and gross underutilization of information systems." 15/ All countries can benefit from sharing knowledge and learning from the experience of other countries, especially in such areas as identifying factors that are critical to computerization, computerization planning and solving management problems in implementing computerization systems.

52. The United Nations system has an important role to play in assisting countries in crime and criminal justice issues, especially in the following areas: (a) development of general guidelines in computerization; (b) strengthening of information networks based on computer technology; and (c) provision of direct technical assistance in computerization of the administration of criminal justice. These areas of action should lead to the development of national capacities for the effective use of computers in the field of criminal justice.

53. Appropriate formulation and implementation of the tasks entailed in the role of the United Nations system require a long-term plan, which will be discussed at the workshop in connection with the draft resolutions contained in Committee decisions 11/103 and 11/105. Issues that may be useful for that discussion are outlined below.

B. Development of guidelines

54. The Department of Technical Co-operation for Development has issued three manuals on the computerization of public administration that are relevant to the administration of criminal justice: Modern Management and Information

Systems for Public Administration in Developing Countries, 6/ Management of Government Information Systems: Elements of Strategies and Policies, 16/ and Use of Information Technologies in Public Administration: A Guide for Executive Development (TCD/SEM.86/5).

55. The manual on the effective use of computers in criminal justice (see paragraph 20 above) will deal with more specific issues related to the computerization of the administration of criminal justice as a follow-up to the Manual for the Development of Criminal Justice Statistics. 5/ The new manual is intended to make criminal justice practitioners, decision makers and other persons concerned more aware of the issues involved in computerization, particularly in developing countries.

56. The development of guidelines for the applications of computer technology in specific areas of the management of criminal justice will form a major component of future activities in this area.

C. Strengthening the dissemination and exchange of information: the United Nations Criminal Justice Information Network

57. The development of viable policies in the field of crime, as in other fields, depends on adequate and timely information. Making wise decisions requires familiarity with the range of alternatives and their suitability in different circumstances: knowledge of what works, what does not, and under what conditions.

58. In most fields, such as the natural sciences, medicine and engineering, there are information networks to centralize and disseminate up-to-date information in a systematic way, utilizing input from researchers and practitioners in different parts of the world. This is becoming increasingly common in other fields, such as population and the environment, and in various areas of United Nations activity. The Earthwatch system of the United Nations Environment Programme and the Population Information Network (POPIN) project, undertaken by the United Nations jointly with scientific institutions and other relevant bodies, are cases in point.

59. In March 1989, the United Nations Criminal Justice Information Network (UNCJIN) was established in response to Economic and Social Council resolution 1986/11.*

60. The founding members of UNCJIN include all the United Nations institutes for the prevention of crime and the treatment of offenders (see annex I). Many other criminal justice research institutes, agencies and non-governmental organizations, mostly from developed countries, have joined UNCJIN since its first year of operation. Extrabudgetary funding for UNCJIN has been made possible largely by the School of Criminal Justice of the State University of New York at Albany, New York, in anticipation of as much of its financing as possible being taken over by the United Nations in its programme budget for

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*After a number of preparatory meetings attended by experts from the relevant United Nations departments and non-governmental organizations, the Crime Prevention and Criminal Justice Branch began the process of establishing UNCJIN. UNCJIN is serviced by the Telecommunications Cooperative Network, which acts as the network host. The Telecommunications Cooperative Network is a non-profit organization specializing in providing network services to other non-profit organizations, including a number of United Nations agencies.

the biennium 1992-1993. In principle, however, both logistically and substantively, a more comprehensive funding plan is required that would enable UNCJIN to provide a more efficient and substantive service to the international criminal justice community.

61. UNCJIN has two basic goals:

(a) To enable its members to send to and receive from other UNCJIN members, and members of other networks, any amount of information;

(b) To provide substantive data from various data bases within and outside the network, including data from the United Nations surveys of crime trends, operations of criminal justice systems and crime prevention strategies and information on new legislation interesting court decisions and on scheduled criminal justice meetings. A special software demonstration at the Eighth Congress will highlight the features of UNCJIN. A blueprint of UNCJIN showing the parts of it in operation and under development is provided in annex II.

62. Focusing on computer networking does not mean eliminating other forms of communication that may usefully complement electronic information. In an effort to reach as wide an audience as possible, a newsletter is published four times a year and sent to national correspondents and others on a mailing list. The newsletter is especially intended for developing countries that are, in many cases, not in a position to afford the hardware necessary for communication via computer network. Another purpose of the newsletter is to maintain the interest of UNCJIN members in the Network. Each issue of the newsletter focuses on a particular topic. The first issue focused on juvenile justice, whereas the second focused on victims of crime.

63. In the draft resolution on the computerization of criminal justice, contained in Committee decision 11/103, potential directions of development of UNCJIN are identified, together with possible sources of funding. At the Sixth Annual Joint Meeting on Programme Co-ordination in the Field of Crime Prevention and Criminal Justice, the United Nations institutes that were founding members of UNCJIN committed themselves to the continued expansion of its operations, especially in developing countries, which may have particularly difficult technical and logistical problems in joining UNCJIN.

64. Pursuant to the Riyadh discussions, the United Nations regional institutes for the prevention of crime and the treatment of offenders undertook to consider financing new membership fees for developing countries and to develop, in co-operation with the Crime Prevention and Criminal Justice Branch, crime-related data bases oriented to the needs of their regions. This would include, to the extent possible, plans for training courses for criminal justice practitioners from developing countries in the collection and analysis of criminal justice statistics data for the Fourth United Nations Survey of Crime Trends, Operations of Criminal Justice Systems and Crime Prevention Strategies (1987-1990).

65. A comprehensive subsidy programme is needed that will enable developing countries not only to pay the UNCJIN membership fees, but also to buy the necessary software and hardware; the programme would also provide technical assistance in the use of the software and network services, including on-site training in the use of communications software, in the operation of personal computers, and in ways to use UNCJIN to the best advantage.

66. The development of UNCJIN is only one facet of strengthening information dissemination and exchange. In the draft resolution on the management of criminal justice and the development of sentencing policies, contained in Committee decision 11/105, section F, the Eighth Congress would request the Secretary-General to facilitate the exchange of information, experience and personnel between jurisdictions that are in the process of computerizing some aspect of their criminal justice systems and those that are at a more advance stage of that process. To help carry out that task, a list of available software programmes could be compiled, together with references, and regularly reviewed as one of the data bases of UNCJIN. The list could be published separately once or twice a year. It might also be appropriate to establish a software library in the Secretariat that would consist of software programmes sent to the Secretariat by Member States interested in sharing them with other Member States.

D. Implications for technical co-operation

67. Section II and paragraphs 54-66 above underline how intricate, lengthy and risky a computerization project may be if it is not properly planned, financed, administered and evaluated. The task of computerizing the management of criminal justice requires diversified and flexible strategies that maximize the benefits of computerization and lower the risks involved. Therefore, the extent to which system users are aware of the nature and potential of computerization in their particular sector must first be identified and assessed through education and training.

1. Education and training

68. One of the main functions of training activities is to fill the gaps in the knowledge and awareness of criminal justice personnel, thus enabling them to overcome any reluctance to use new technology.

69. There are a number of types of education and training, each with different target groups and priorities. One type is more strategic in nature and oriented towards policy makers. A second is for the managers who must run the systems. A third type is for technicians in systems software, systems hardware and data communications. A fourth is for end users, those who actually handle the computer applications. 17/ Depending on the stage of implementation of the project, the training of certain groups may have priority over that of other groups.

70. Information is vital to each group, but the type of information, the method by which the training can be effectively delivered, the type of person who will carry out the training and the tools necessary for the training will differ greatly.

71. The manner in which the technical infrastructure of training is developed can be challenging, for successful results may require an elaborate plan. Its elements should include the subject and objectives of the training, identification of the staff to be trained, the post-training support mechanism, the applicability of training methods to conditions in other countries interested in training their staff etc.*

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*For a model course syllabus for public administrators, prepared by the Department of Technical Co-operation for Development, see Use of Information Technologies in Public Administration: A Guide for Executive Development (TCD/SEM.86/5).

72. The training of end users of computerized criminal justice systems is particularly important. There are many ways to bring about their involvement, such as:

(a) Setting up a steering committee, comprised of the managers of the users' group and the system developers, to guide the work;

(b) Keeping the entire user community informed of progress in systems development;

(c) Getting the users to carry out a cost-benefit analysis to justify the new system;

(d) Rapidly producing prototype systems so the users can acquire a feeling for the final system early in the development process;

(e) Training users to participate as programmers in the development team;

(f) Holding intensive discussions with users on computer screen layouts.

73. Such user involvement results in a better information system in that they use the system more and also report that they are more satisfied with the system.

74. Since such a training programme cannot be a one-time event, one prerequisite for its successful launching is the proper identification, selection and training of officials responsible for computerization. Of particular importance is the training of trainers who are capable of developing and monitoring training programmes in their home countries. The training of trainers should be at the top of the list of the many competing priorities of the United Nations computerization programme.

75. Pilot training courses of this type should be organized at the regional and interregional levels. The United Nations institutes for the prevention of crime and the treatment of offenders, in co-operation with other United Nations bodies and offices concerned and other international organizations, may be in a position to consider and plan the organization of such courses for computer trainers, subject to the availability of resources.

2. Technical co-operation projects

76. Technical co-operation has been one of the essential means of building national capacities for self-reliant development. As technical co-operation is not free to receiving countries, it should be planned and implemented in a manner preventing unnecessary project costs.

77. Technical co-operation may be financed by a loan that the receiving country will be committed to repay. It may also be financed by a non-reimbursable grant, but even this form of financing most likely results in important direct and indirect costs to the recipient. These include a counterpart contribution to the project (e.g. office space and equipment, salaries of local support staff), which the aid agency will expect; and an administrative burden to the recipient that involves dealing with the agency according to its own particular style and integrating the project into its national development planning process. If the project involves the establishment of a new facility, the developing country will have to bear the costs of running it.

78. Technical co-operation projects at the national level typically comprise the following main components of funding: short-term and long-term personnel (international and local); short-term and long-term training, including study tours and fellowships (international and local); and sub-contracts, equipment and reporting (i.e. technical and managerial reports). To ensure their long-term effectiveness and impact on the country, projects normally call for a balance of these different components, rather than entailing "in-and-out" expertise and shopping lists of miscellaneous equipment.

79. Technical co-operation projects can be financed from a variety of bilateral and multilateral sources. Within the United Nations system, the United Nations Development Programme (UNDP) is a principal source of pre-investment grants. In addition, there may be special purpose trust funds that receive voluntary contributions from many donors, including the United Nations Social Defence Trust Fund.

80. The Department of Technical Co-operation for Development provides support for pilot projects, training workshops and specialized advisory services, in co-operation with UNDP through its regular programme of technical co-operation. The development of long-term technical and organizational capabilities to meet national needs identified by each country is the central goal of the activities of the Department. As a result of these activities, countries receiving assistance should attain financial, organizational and substantive self-reliance in implementing the projects.

81. In the United Nations crime prevention and criminal justice programme, three Member States, each at a different stage of involvement in the computerization project, have recently been implementing the goals set in the country projects. Each of the projects has been formulated and is being executed with other United Nations bodies and offices, including the Department of Technical Co-operation for Development, the Statistical Office of the Secretariat and the World Bank. The Interregional Advisor of the Department of Technical Co-operation for Development, in close co-operation with the Crime Prevention and Criminal Justice Branch, has also provided advice on the design of some of the projects. Each of the projects is monitored by the United Nations Office at Vienna, Centre for Social Development and Humanitarian Affairs.

IV. FINAL OBSERVATIONS

82. To assist developing countries in implementing the course of action proposed in the present report, there are a variety of possibilities for bilateral and multilateral co-operation at the international level. Bearing in mind the interdisciplinary nature of such co-operation, these possibilities include:

(a) Assistance to national authorities in the development of methodologies for the creation and use of information systems tailored to specific national needs and circumstances, including assistance to national training programmes for user-managers and systems personnel (see paragraphs 37-39 and 46-49 above);

(b) Regional, subregional or interregional training seminars organized within the framework of the United Nations technical co-operation programme and crime prevention and criminal justice programme to sensitize national policy makers and high-level government officials to the need to plan for and appropriately implement computerization projects; and similar training seminars for trainers, system users, professionals and programmers: Other international organizations may wish to contribute to many of these undertakings (see paragraphs 74-75 above);

(c) Surveys on the state of development of criminal justice information systems in various countries and the dissemination of such information as inputs to the above-mentioned seminars (see paragraphs 21-22 and 50 above);

(d) International collection, dissemination and exchange of information on appropriate general purpose software and training courses, which will help countries to obtain information on current initiatives and plans for the computerization of public administration, which may, in turn, facilitate closer collaboration between interested countries (see paragraph 66 above);

(e) Networking mechanisms, which are required to promote and broaden the scope of information exchange among Member States and interested institutions in all areas related to the computerization of criminal justice (see paragraphs 57-65 above);

(f) Bilaterial and multilateral assistance in national training programmes for trainers, user-managers and systems personnel: Technologically developed countries can contribute to technical co-operation activities and to the creation of relevant information systems tailored to specific national circumstances. They can also aid developing countries in designing software packages for the administration of criminal justice and in training staff to use them (see paragraphs 68-73 above);

(g) Formulation and implementation of, upon request of Member States, specific projects to be financed bilaterally and multilaterally (see paragraphs 76-81 above);

Notes

1/ See The Application of Computer Technology for Development (United Nations publication, Sales No. E.71.II.A.1); and The Application of Computer Technology for Development (United Nations publication, Sales No. E.73.II.A.12).

2/ United Nations publication, Sales No. E.76.IV.2, para. 412.

3/ United Nations publication, Sales No. E.81.IV.4, chap. I, sect. B.

4/ United Nations publication, Sales No. E.86.IV.1, chap. I, sect. E.

5/ United Nations publication, Sales No. E.86.XVII.16.

6/ United Nations publication, Sales No. E.85.II.H.1.

7/ See Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, and Poland, Ministry of Justice, Computerization of Criminal Justice Information Systems: Realities, Methods, Prospects and Effects, HEUNI No. 12 (Helsinki, Government Printing Centre, 1987).

8/ See United Nations Office at Vienna, Centre for Social Development and Humanitarian Affairs, Crime Prevention and Criminal Justice Newsletter, Nos. 14/15, December 1987, special double issue on the computerization of criminal justice information.

9/ See also Edward C. Ratledge and Joan E. Jacoby, Handbook on Artificial Intelligence and Expert Systems in Law Enforcement (Westport, Connecticut, Greenwich Press, 1989); and Anil K. Jain, "Expert systems: prospects for developing countries" (IPCT.41(SPEC.)).

10/ See Computers in Correctional Administration and Links with Other Legal EDP Systems, proceedings of the sixth colloquium on the use of computers in the administration of justice, held at Helsinki from 8 to 10 September 1987 (Strasbourg, Council of Europe, 1988); and Organisation for Economic Co-operation and Development, An Exploration of Legal Issues in Information and Communication Technologies, Information Computer Communication Policy, vol. 8 (Paris, 1983).

11/ See William Archambeault, "Emerging issues in the use of micro-computers as management tools in criminal justice administration", Microcomputers in Criminal Justice: Current Issues and Applications (Cincinnati, Ohio, Anderson Publishing, 1987), pp. 99-112; and Denise E. Bronson, Donald C. Pelz and Eileen Trzcinski, Computerizing Your Agency's Information System, Sage Human Services Guide No. 54 (Newbury Park, California, Sage Publications, 1988), pp. 28-57.

12/ See also Management of Government Information Systems: Elements of Strategies and Policies (United Nations publication, Sales No. E.89.II.H.4); and Modern Management and Information Systems for Public Administration in Developing Countries (United Nations publication, Sales No. E.85.II.H.1), chap. IV.

13/ Modern Management and Information Systems ..., paras. 96, 97 and 139.

14/ See Modern Management and Information Systems ..., para. 91; Hans-Jochen Schneider, "Software production: organization and methodologies" (IPCT.63); and Hermann Kopetz, "Guidelines for software production in developing countries" (IS.440).

15/ Modern Management and Information Systems ..., para. 4; see also M. Sanwal, ed., Micro-computers in Development Administration (New Delhi, Tata McGraw-Hill Publishing, 1987); "End user computing in development administration: the vital role of administrators", Public Administration and Development, 1990, vol. 10/2, pp. 210-221; and K. B. Agrawal, "Law and computers in India - a study in application", Quarto Congresso Internazionale sul tema, Informatica e Regolamentazioni, Giuridiche, Roma, 16-21 May 1988.

16/ United Nations publication, Sales No. E.89.II.H.4.

17/ See Modern Management and Information Systems ..., paras. 180-181; and United Nations Educational, Scientific and Cultural Organization, Education and Informatics: Strengthening International Co-operation, vols. 1 and 2, proceedings from an international congress held from 12 to 21 April 1989.

Annex I

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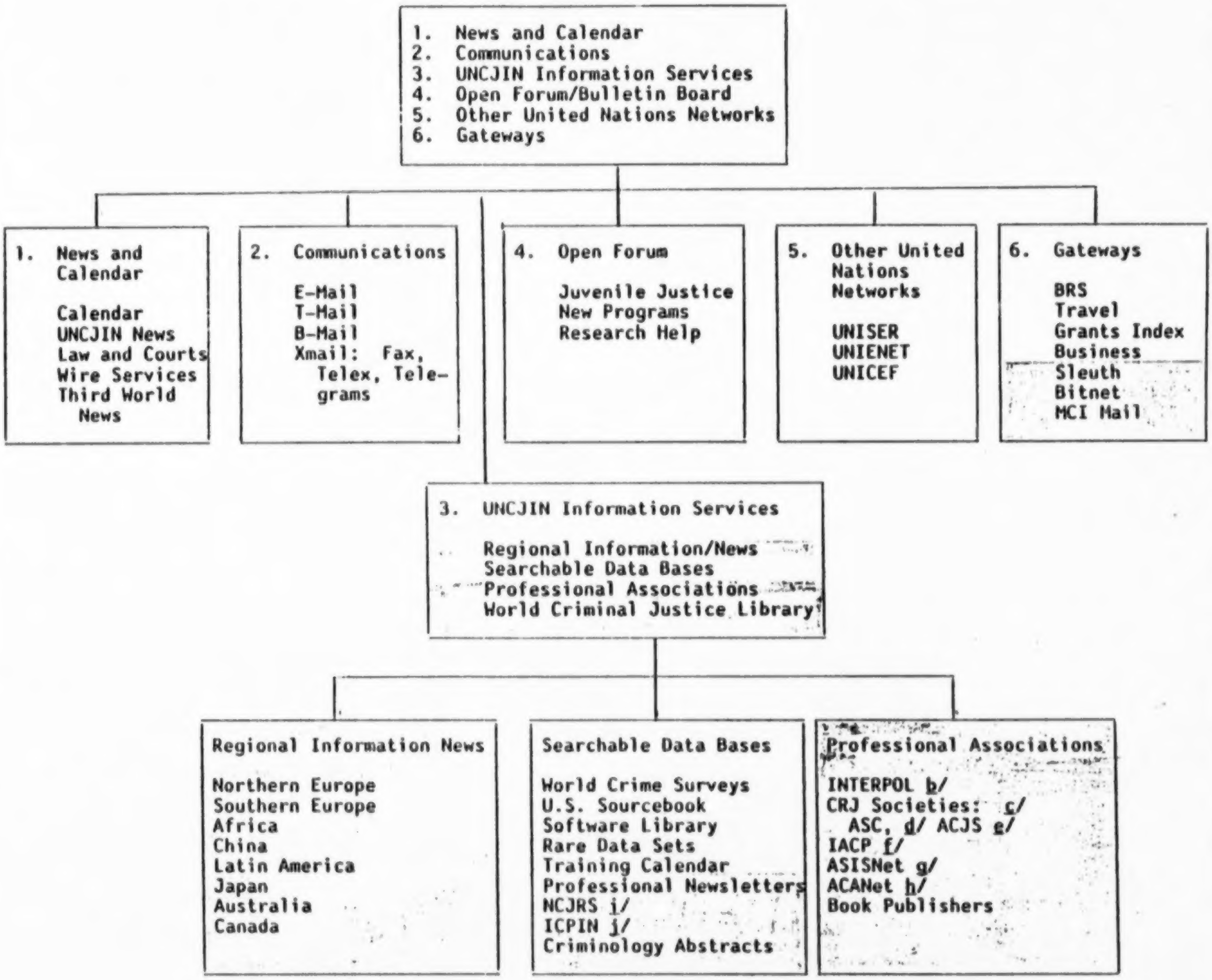
Annex II

UNITED NATIONS CRIMINAL JUSTICE INFORMATION NETWORK a/


1. News and Calendar
2. Communications
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6. Gateways
1. News and Calendar
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a/ Areas under development are shaded.

b/ International Criminal Police Organization.

c/ Criminal Justice Societies.

d/ American Society of Criminology.

e/ Academy of Criminal Justice Sciencies.

f/ International Association of Chiefs of Police.

g/ American Society for Information Science Network.

h/ American Correctional Association Network.

i/ National Criminal Justice Reference Service.

j/ International Crime Prevention Information Network.

UNITED NATIONS

EIGHTH
UNITED NATIONS CONGRESS
ON THE PREVENTION OF CRIME
AND THE TREATMENT OF OFFENDERS

Havana, Cuba, 27 August to 7 September 1990

Distr.
GENERAL

A/CONF.144/14/Add.1
29 August 1990

ORIGINAL: ENGLISH

Agenda item 4

CRIMINAL JUSTICE POLICIES IN RELATION TO PROBLEMS OF IMPRISONMENT, OTHER PENAL SANCTIONS AND ALTERNATIVE MEASURES (TOPIC II)

Computerization of the administration of criminal justice

Report of the Secretariat

Addendum

Executive summary of the Manual on Computerization in the Management of Criminal Justice

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Executive summary of the Manual on computerization in the management of criminal justice

INTRODUCTION

1. Computers are already in widespread use in criminal justice systems, yielding considerable benefits for those who use them. At the same time, some attempts at computerization have failed to reach fruition or have been costly and ineffective. From these experiences it has been possible to construct a set of guidelines which would ensure the successful implementation of computerization in criminal justice.

2. There are three guiding principles which should be adhered to in formulating policy for computerization in criminal justice:

(a) Top management responsibility. First, top management needs to be directly involved in any attempt at automation, not only to make decisions about the scope and nature of computerization but also to commit resources and to create the necessary management structures to ensure that the computer systems are completed and are effective. Objective evaluation of the system after completion is an important component of that process. All too often, policy makers wish to leave such responsibilities to computer professionals. Top management must take the responsibility directly, however, because the work of planning and introducing computer systems crosses many political and administrative boundaries, requires a considerable commitment of resources and tackles problems which are essentially managerial in nature;

(b) Top down approach. Secondly, the task of computerization should be tackled from the top down; it is essential to understand the overall objectives of the organization and to develop a computerization plan which tackles them in a co-ordinated manner. Too often, manual processes are automated in isolation, without due reference to the overall goals of the organization, resulting in systems which do not achieve their full potential benefit;

(c) One step at a time. Thirdly, automation should be tackled in small, carefully planned and managed steps. Many computerization projects fail because they are too grandiose in their design. While it is important to have a clear view of the entire system, and to understand the relationships between various parts, implementation should proceed one step at a time.

3. Many of the applications of computerization to criminal justice work, particularly in the early days, made a relatively insignificant impact on the operation of criminal justice as a whole, although they involved considerable investments of financial and staff resources. The early applications concentrated on computerizing those parts of the criminal justice system that were similar to work in the general

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commercial world and for which computer solutions had already been developed. The first computer systems for the police were data base systems to record criminal histories and to computerize court administration-involved accounting systems to handle fine and fee payments, and data base systems to record details of cases waiting to be heard. In prisons, the systems in use were usually statistical in nature, to keep track of the numbers of inmates.

4. Those applications usually addressed local needs rather than the overall or fundamental objectives of criminal justice. For example, although computers have reduced some of the administrative paperwork associated with case handling by courts, apart from a few specific examples, until relatively recently few have assisted significantly in the conduct of trials, the throughput of cases, or the judicial decision-making process. Similarly, in prisons, although computers provided an audit function for keeping track of the numbers of inmates in custody, they did not assist significantly with overcoming the basic problems of prison overcrowding or régime management.

5. Great care is needed, therefore, to computerize in a manner which will yield real benefits, both in relation to the overall task and objectives of the criminal justice system and of its agencies, and to the level of investment in the computer system.

6. It is also important to recognize that the main problems associated with the computerization of criminal justice are not primarily of a technical nature; rather they are associated with the difficulties of managing the criminal justice system itself. Computerization cannot turn a badly managed organization into an efficient one, but it can help a well-managed organization to work more effectively and more efficiently. A prerequisite for any attempt at computerization is therefore to ensure that the organization itself is well-structured, properly managed and efficiently operated. Failure to do so will result in deficiencies in the organization being revealed in a dramatic and costly way once the process of computerization is begun.

I. BENEFITS OF COMPUTERIZATION IN CRIMINAL JUSTICE

7. The benefits of computerization in criminal justice arise only from the ability of computer systems to make a properly managed and structured criminal justice system work better; the benefits of computerization are therefore those associated with improvements in the efficiency or effectiveness of the criminal justice process itself. Computerization per se offers no benefits or advantages. Indeed, given the high costs of computerization, the inappropriate use of computers can seriously reduce the effectiveness of an organization and will impose high continuing costs for which little or no benefits are realized. Given that the criminal justice system is an essential component of society in that it protects the fundamental human rights of individuals through the

upholding of the rule of law, it follows that any mechanism for improving the operation of criminal justice will have a very significant impact on many of the values which are held most dear. At this level, computers can and do provide significant benefits - they assist in the detection of crime, they provide better and more accurate information to help judges to make better decisions, they store information accurately, and they reduce the chance of wrongful arrest or conviction, while assisting with the conviction of the guilty.

8. These overall benefits are not achieved in isolation; they arise through the systematic application of computers both in individual criminal justice agencies and in a co-ordinated way across agencies. As a result, they facilitate the day-to-day operation of the criminal justice process. By way of example, some of the benefits of computerization in individual agencies and at a policy level are as follows:

(a) At the operational level:

(i) For law enforcement officers, to trace the past criminal history, outstanding arrest warrants and summonses of suspects, not only in the local area but country-wide, or even internationally;

(ii) For prosecutors, to provide much-needed assistance with the preparation and handling of the increasing volume of cases and to provide automated systems to ensure that case preparations are completed within statutory and other time-limits;

(iii) For judges, to gain access to statute and case law pertaining to selected cases, and to obtain accurate information on the past criminal record of persons found guilty; for court administrators, to maintain accurate records of court decisions and to monitor the implementation of those decisions; often computers also assist with the administration of related court responsibilities, such as the collection of fines and costs, service of warrants, and the like;

(iv) For prisons, to record details of inmates and provide accurate registers of those held in custody; on a national scale, such systems can track individuals anywhere in the prison system;

(v) For probation and parole officers, to monitor the progress of cases;

(vi) To enable information to be passed rapidly and accurately between agencies to enable cases to be dealt with rapidly;

(b) At the level of senior management in individual agencies: For service chiefs, to monitor the effectiveness of their service in terms of key effectiveness measures, such as the reported crime rates, clear-up rates, incidence and detection of serious crime, sentencing patterns, case throughput and incidence of re-offending;

(c) At the criminal justice policy-making level: To provide accurate aggregated information from individual agencies in a form which enables the operation of the overall criminal justice system to be monitored - for example, through relating the effects of custody diversion programmes to the incidence of re-offending, based on information obtained from police, courts or probation/parole records;

(d) Internationally: To enable criminal justice agencies in different countries to benefit from the experience of others through the international exchange of information to common standards, facilitated by the use of computers both to compile the information and to enable it to be exchanged easily.

9. In practice, these different levels and types of benefits are interlinked. For example, the introduction of computer systems to facilitate the day-to-day operational work of the courts and police will enable accurate and timely statistical information on the arrest and sentencing practice to be obtained and passed to an automated criminal statistics system, so long as the individual operational and statistical systems are designed to common standards and with such information exchange in mind.

II. PLANNING COMPUTERIZATION

10. To achieve significant benefits from computerization, the investment in development and computer equipment need not be large; indeed it is often the case that the best value is obtained from the smallest computer systems. However, there must be an overall plan to guide the introduction of computer systems, no matter how small or large they might be. Benefits at the operational level can often be achieved in the short term simply through the piecemeal provision of small computer systems, but unless these individual developments are co-ordinated in some way, the information collected by the individual systems will not be compatible and, as a result, any later plans to make operational improvements by automating the transfer of information between agencies (or even between offices of the same agency) will prove impossible or unnecessarily expensive.

11. More benefits from computerization are achieved through careful and methodical planning than through the purchase of innovative or expensive computer equipment. For that reason, it is important that the decision to computerize, the formulation of policy on computerization, the detailed planning and management of computerization, and the

co-ordination of computerization with other organizational changes are all seen as the responsibility of the senior managers of criminal justice rather than of computer specialists or vendors. The level of senior management which is most appropriate will depend on the nature and scale of the computerization, but in a well ordered approach it would be expected that:

(a) Policy on the overall approach to computerization of criminal justice, in terms of inter-agency standards and information needed for policy formulation, should be set at the national level (and state level in federal systems) by the equivalent of the head of the Department of Criminal Justice (or, where the functions are separated, by the chief of police or head of the prison service), and the head of the judiciary, assisted and advised as appropriate by their respective staffs;

(b) Policy on the application of computers within criminal justice agencies should be set by the heads of the individual agencies, taking account of any overall policies for the criminal justice system as a whole;

(c) The scope and overall design for computer systems in individual agencies should be decided by the head of the agency, in consultation with local managers of the agency;

(d) The formulation of detailed plans for implementing computer systems in individual agency offices should be the responsibility of the local manager.

12. There is scope, and indeed a need, for computer specialists to be involved in advising decision makers in the formulation of policy or in the detailed planning of individual computer systems, although it is stressed that the role is an advisory and not a decision-making one.

III. OBJECTIVES OF COMPUTERIZATION

13. It is essential both to the users of computer systems and to the senior managers responsible for taking the decision to computerize that clear objectives be set for the systems; for the users, the objectives should spell out exactly why the system is to be introduced and the specific benefits which are expected to come from it (and which have to be achieved if the project is to be worthwhile). To the senior manager responsible for allocating resources to the project, specific objectives should provide clear and unequivocal criteria by which to assess the system when it is complete.

14. To be effective, system objectives need to be specific, quantitative, time-limited and related to the performance of the organization itself, rather than to the computer system. Thus, for example, the stated objective to reduce the clerical effort per court

case to 1.5 person-hours is helpful, while the goal to improve overall efficiency is not. It is too vague to be of value.

15. The specification of clear objectives means that, once implemented, computer systems can be evaluated objectively; they either achieve their objectives or they do not. If they do not, the causes can be examined and rectified, while if they do, the experience gained from the project can be put to good use in helping to design future systems.

IV. APPLYING COMPUTERIZATION TO CRIMINAL JUSTICE

16. There is no simple recipe to prescribe how computers can best be applied to criminal justice. Computers come in a wide variety of shapes and sizes, as do organizations for criminal justice. Computers, for example, can be small desk-top microcomputers or large room-size mainframe computers; they can operate in isolation, or they can be connected together; the programs and information on them can be centralized at one point or can be distributed over a wide area; the computer programs can be designed to serve just one criminal justice agency or all agencies of the criminal justice system; they can be designed to serve a local area or a whole country. Equally, criminal justice agencies can be managed centrally, locally or somewhere in between; the geographic boundaries of different criminal justice agencies can match or not; common standards and definitions can apply to information in each agency or not; and there can be a central co-ordination of the criminal justice system as a whole or not.

17. Nevertheless, it is clear from experience that some well-defined combinations of approaches do not work as effectively as others. Criminal history systems, for example, work most effectively on a national level and generally require a large mainframe computer to work effectively. Court case management systems, on the other hand, lend themselves to locally based computer systems of modest size. Some degree of integration of function is effective when it is between groups of criminal justice agencies which work closely together, but attempts to develop fully integrated systems which attempt to serve all criminal justice agencies together are rarely successful.

18. Overall, the most effective approach appears to be to apply computerization in relatively modest steps, serving one or two criminal justice agencies at a time. Although there are many hundreds of criminal justice computer systems in use throughout many countries, there is also a large number of failures - systems which never made it to completion, or which were abandoned shortly after implementation. Often these systems failed because their purpose was not clearly specified or their design was not prepared in sufficient detail; as a result, it is often difficult to ascertain exactly why they failed. A common theme, however, is that system planners, often with prior experience limited to the commercial world, underestimated the scale and complexity of criminal

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justice requirements and effectively bit off more than they could chew. The world of criminal justice computing is littered with grandiose plans for systems which never made it off the drawing board.

19. Breaking the task down into smaller steps, each manageable in its own right but consistent with the overall computerization plan, reduces the risk of failure. Compatibility and integration of individual stages is ensured so long as clear and consistent definitions for the information items held in the computer systems are adhered to in order to enable any future needs for exchange of information to be met. This requires a high degree of co-ordination and planning in criminal justice computerization.

V. PLANNING AND IMPLEMENTING COMPUTER SYSTEMS

20. There are numerous stages involved in planning and implementing computer systems, whether in criminal justice or in any other sphere of activity. By far the majority of the effort required in planning and preparing for computerization, as opposed to the technical design and development of the systems themselves, is of a managerial nature, relying on the detailed knowledge of the operation of criminal justice and of its agencies rather than on any detailed or technical knowledge of computer systems. The task of planning computerization is therefore more appropriately that of senior management staff of the agencies affected by the computerization, assisted, where appropriate, by their operational and clerical staff (who share a wealth of knowledge about how the existing processes do or should work) and by technical computer staff or advisors (who can offer advice on the technical options available for meeting specific requirements).

21. The first stage of computerization will always be to develop an overall plan for the scope, objectives and scale of computerization proposed, within which any subsequent systems development will take place. This is sometimes referred to as needs assessment. It is not unlike the preparatory stages of other major building projects, in which architectural or engineering plans are essential before the construction of any component part of the total project can begin. The overall plan, however, should not be a technical blueprint for a computer system; rather it should recognize that at best, computers can merely store, manipulate and retrieve large amounts of information quickly and accurately. It follows, therefore, that the plan for computerization should address what information is to be held, what is to be done with it and who will use it, all of these decisions addressing the overall objectives to the organization of introducing computerization.

22. The strategic requirements for computerization are likely to change over time, reflecting the changing objectives of, and demands on, the criminal justice system. It is therefore important to see the preparation of an overall plan as a continuing process, involving a regular and systematic review of requirements.

23. Once the overall plan has been decided upon, the contribution of individual computer systems to the total objectives can be more clearly identified, and priorities can be set to decide which projects are tackled first.

24. For each project tackled, there are several stages, each requiring resources and management. All too often, computerization is seen only in the limited terms of the technical aspects of systems development - the writing of computer programs and the installation of computer hardware - resulting in projects which are under-resourced and which therefore fail. All projects should go through the following stages:

(a) Setting up a project management structure to ensure that the proposed computerization is completed on time and within budget and achieves the objectives set for it, and to provide a mechanism for users to influence and guide the development of the computerization;

(b) Analysing the requirements to determine precisely what the computer system must do, what information it needs to store and what screen and report layouts are required;

(c) Breaking down the total project into manageable stages, and analysing the time and resources required to complete each stage;

(d) Deciding how best to implement the proposed system - whether to utilize an existing system from another agency, for example, or to develop a new system ab initio;

(e) Deciding what computer hardware, if any, needs to be purchased, and planning and implementing the procurement procedures, as necessary;

(f) Developing the system, where necessary, or modifying an existing system to meet the specific needs of the organization;

(g) Piloting the system, as necessary, to verify that it functions satisfactorily and to enable users to familiarize themselves with the system and refine their requirements;

(h) Testing the system both to ensure that it works correctly under all test conditions and that the users satisfy themselves that it operates correctly under normal operational conditions;

(i) Implementing the system by installing it on computer hardware, planning the change-over from manual to automated working and ensuring that the automated system works reliably enough to replace the manual methods;

(j) Training the users in the use of the system;

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(k) Planning and implementing the transfer of data from existing manual (or automated) records to the new system;

(l) Preparing and issuing documentation to assist users in the use of the system and to provide technical guidance to the computer staff who will maintain and support the system, and training materials to the staff who will train users;

(m) Evaluating the extent to which the completed system meets its design objectives, and subsequently, monitoring their continued achievement;

(n) Preparing procedures to check information quality and to ensure that quality standards are held within pre-defined limits;

(o) Planning for the eventuality of major disasters which could affect the computer system, such as fire, flood or malicious action;

(p) Planning for the physical security of the computer system and the information stored in it;

(q) Planning and preparing procedures to ensure that all requirements of data protection are met;

(r) Planning the ongoing support and development of the system;

(s) Setting and maintaining standards to define the layout and interpretation of all items of information stored in the computer system.

VI. PRACTICAL CRIMINAL JUSTICE COMPUTERIZATION

25. The exact choice of systems applicable to any particular jurisdiction and the priorities attached to them will need to be based on a full strategy study. In practice, however, a small number of different categories of criminal justice computer applications are in widespread use and may be regarded in some instances as being a useful starting point for computerization. These are:

(a) Central criminal history system;

(b) Court case management and administrative system;

(c) Prison inmate recording systems;

(d) Criminal justice statistics system.

26. Of those listed, numerous examples are already in use, and many of them may be suitable for transfer to other jurisdictions. Despite the availability of such systems for transfer, however, the basic planning

stages still need to be completed in order t determine an overall plan for computerization and to set specific objectives for the main computerized systems against which to judge the potential performance or capabilities of existing systems for transfer.

27. For any proposed computerization there are usually three options available:

(a) To use a computer system which has already been developed for use elsewhere;

(b) To adopt a computer system from elsewhere, but to modify it to suit the particular requirements of the organization;

(c) To design and develop a new computer system *ab initio*.

The costs of each of these options should be examined in relation to the benefits achievable from it.

28. Even in cases where it is decided to develop a new system from scratch, however, a start can be gained from the experience of other similar agencies, both in terms of examining the functionality of the computer systems they have implemented and taking into account the lists and definitions of information elements held in the systems. Because there is likely to be considerable overlap in the requirements of one agency as compared to another, the information from other computer systems may be used as a checklist to ensure that essential items of information or system functions are not omitted.

29. Any significant computerization will have an impact on an organization and its staff by altering the way in which people are required to work, the flows of information between staff and the tasks which they are required to perform. The introduction of computerization therefore needs to be handled sensitively and with careful planning. Keeping staff informed of proposals to introduce computerization and providing adequate training in the use of the system and its effects on the work of the organization play essential roles in ensuring that staff are prepared for, and will work with, the computer systems.

30. For the planners of the system, there is a significant responsibility to ensure that any personal information held on the computer system is protected - both physically, to prevent it getting into the wrong hands, and in other ways, to prevent it from being used in ways which might infringe upon the rights of those to whom the information refers. There is also a responsibility to ensure that the computer system as a whole is protected from damage or failure, both by taking steps to reduce the incidence of such events and by planning to reduce the effects of such events when they do occur.

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VII. CONCLUSION

31. When all these steps are taken, experience has shown that computerization in criminal justice can and does achieve significant benefits which justify the considerable investment of time and resources. The decision to computerize or not is the responsibility of the senior managers of the criminal justice system. Equally, the success or failure of computerization depends on the extent to which the same senior managers prepare for, and plan, the computerization.
